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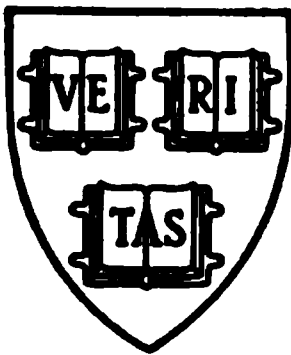
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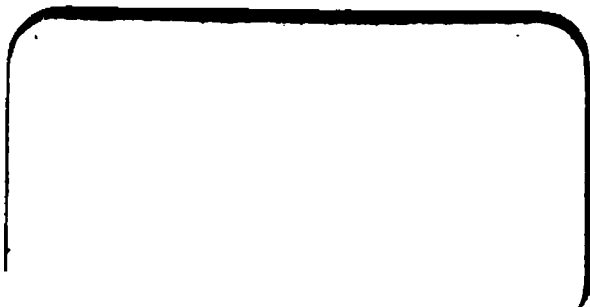
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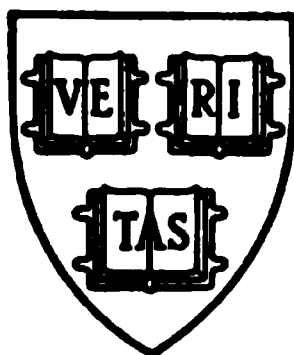
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**THE**  
Constitution  
**OF THE**  
**UNITED STATES.**



U.S. Constitution

THE

CONSTITUTION

OF THE

UNITED STATES,

WITH NOTES BY

ROBERT DESTY.

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SECOND EDITION,

WITH SUPPLEMENT AND TABLE OF CASES BY

ALBERT BRUNNER.

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SAN FRANCISCO:

SUMNER WHITNEY & CO.

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## **PREFACE.**

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In the preparation of this work the author has endeavored to furnish all the authorities derived from the decisions of the Supreme Court and the various Circuit and District Courts of the United States, as well as of the courts of last resort of the several States, touching the points which have been the subject of controversy since the adoption of the Constitution, and down to the time of publication of this volume. The points decided have been condensed as much as possible, leaving to the reader the opportunity to consult the decisions in which such points have been discussed by references to the authorities consulted. The notes will, it is believed, furnish a full and complete and at the same time a ready index to the points which have been called in question for the last hundred years.

**ROBERT DESTY.**

**SEPTEMBER, 1879.**





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**SEC. 1.—**The right of citizens to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

**SEC. 2.—**Congress shall have power to enforce this article.



# Constitution

## OF THE

# UNITED STATES.

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**WE THE PEOPLE** of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

### ARTICLE I.

**SECTION. 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**SECTION. 2.** <sup>1</sup>The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

<sup>2</sup>No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

<sup>3</sup>[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

<sup>4</sup>When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

<sup>5</sup>The House of Representatives shall chuse their Speaker and other Officers ; and shall have the sole Power of Impeachment.

**SECTION. 3.** <sup>1</sup>The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years ; and each Senator shall have one Vote.

<sup>2</sup>Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year ; and if Vacancies happen by Resignation, or otherwise, during the

Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

<sup>3</sup>No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

<sup>4</sup>The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

<sup>5</sup>The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

<sup>6</sup>The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

<sup>7</sup>Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. <sup>1</sup>The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

<sup>2</sup>The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

**SECTION. 5.** <sup>1</sup>Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business ; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

<sup>2</sup>Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

<sup>3</sup>Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy ; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

<sup>4</sup>Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

**SECTION. 6.** <sup>1</sup>The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same ; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

<sup>2</sup>No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time ; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

**SECTION. 7.** All Bills for raising Revenue shall

originate in the House of Representatives ; but the Senate may propose or concur with Amendments as on other Bills.

<sup>2</sup>Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States ; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

<sup>3</sup>Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States ; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. <sup>1</sup>The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ; but all Duties, Imposts and Excises shall be uniform throughout the United States ;

<sup>2</sup>To borrow Money on the credit of the United States ;

<sup>3</sup>To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ;

<sup>4</sup>To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States ;

<sup>5</sup>To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures ;

<sup>6</sup>To provide for the Punishment of counterfeiting the Securities and current Coin of the United States ;

<sup>7</sup>To establish Post Offices and post Roads ;

<sup>8</sup>To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ;

<sup>9</sup>To constitute Tribunals inferior to the supreme Court ;

<sup>10</sup>To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations ;

<sup>11</sup>To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water ;

<sup>12</sup>To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years ;

<sup>13</sup>To provide and maintain a Navy ;

<sup>14</sup>To make Rules for the Government and Regulation of the land and naval Forces ;

<sup>15</sup>To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions ;

<sup>16</sup>To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training



the Militia according to the discipline prescribed by Congress ;

<sup>17</sup>To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings ;—And

<sup>18</sup>To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof ;

SECTION. 9. <sup>1</sup>The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

<sup>2</sup>The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

<sup>3</sup>No Bill of Attainder or ex post facto Law shall be passed.

<sup>4</sup>No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

<sup>5</sup>No Tax or Duty shall be laid on Articles exported from any State.

<sup>6</sup>No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another : nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

<sup>7</sup>No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law ; and

a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

<sup>8</sup>No Title of Nobility shall be granted by the United States : and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. <sup>1</sup>No State shall enter into any Treaty, Alliance, or Confederation ; grant Letters of Marque and Reprisal ; coin Money ; emit Bills of Credit ; make any Thing but gold and silver Coin a Tender in Payment of Debts ; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

<sup>2</sup>No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws : and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States ; and all such Laws shall be subject to the Revision and Controul of the Congress.

<sup>3</sup>No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## **ARTICLE. II.**

SECTION. 1. <sup>1</sup>The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

<sup>2</sup>Each State shall appoint, in such Manner as the

Legislature thereof may direct, a Number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress : but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

<sup>3</sup> [“The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each ; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed ; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President ; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote ; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.”]

This Clause has been superseded by the twelfth amendment, p. 35.

**4**The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes ; which Day shall be the same throughout the United States.

**5**No Person except a natural born Citizen, or a Citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the Office of President ; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

**6**In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

**7**The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

**8**Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation :—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

**SECTION. 2.** **1**The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States ; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any

Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

<sup>2</sup>He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

<sup>3</sup>The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. <sup>1</sup>The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

<sup>2</sup>In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

<sup>3</sup>The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. <sup>1</sup>Treason against the United States, shall consist only in levying War against them, or in

adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

<sup>2</sup>The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. <sup>1</sup>The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

<sup>2</sup>A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

<sup>3</sup>No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. <sup>1</sup>New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the Jurisdiction of any other State ; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

<sup>2</sup>The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States ; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion ; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress ; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article ; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE VI.

<sup>1</sup>All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

<sup>2</sup>This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ; and



all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land ; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G<sup>o</sup> : WASHINGTON—

*Presidt. and Deputy from Virginia*

*New Hampshire.*

JOHN LANGDON

NICHOLAS GILMAN

*Massachusetts.*

NATHANIEL GORHAM

RUFUS KING

*Connecticut.*

WM. SAML. JOHNSON

ROGER SHERMAN

*New York.*

ALEXANDER HAMILTON

*New Jersey.*WIL : LIVINGSTON  
DAVID BREARLEYWM. PATERSON  
JONA : DAYTON*Pennsylvania.*B. FRANKLIN  
THOMAS MIFFLIN  
ROBT. MORRIS  
GEO. CLYMERTHOS. FITZSIMONS  
JARED INGERSOLL  
JAMES WILSON  
GOUV MORRIS*Delaware.*GEO : READ  
GUNNING BEDFORD JUN  
JOHN DICKINSONRICHARD BASSETT  
JACO : BROOM*Maryland.*JAMES MCHENRY  
DAN OF ST THOS JENIFER

DANL. CARROLL

*Virginia.*

JOHN BLAIR—

JAMES MADISON JR.

*North Carolina.*WM. BLOUNT  
RICHD. DOBBS SPAIGHT

HU WILLIAMSON.

*South Carolina.*

J. RUTLEDGE,

CHARLES PINCKNEY  
PIERCE BUTLER.

CHARLES COTESWORTH PINCKNEY

*Georgia.*

WILLIAM FEW

ABB BALDWIN

Attest

WILLIAM JACKSON *Secretary*

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ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE  
CONSTITUTION OF THE UNITED STATES OF AMERICA,  
PROPOSED BY CONGRESS, AND RATIFIED BY THE LEG-  
ISLATURES OF THE SEVERAL STATES PURSUANT TO  
THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting an establish-  
ment of religion, or prohibiting the free exercise  
thereof ; or abridging the freedom of speech, or of the  
press ; or the right of the people peaceably to assem-  
ble, and to petition the Government for a redress of  
grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the secu-  
rity of a free State, the right of the people to keep and  
bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in  
any house, without the consent of the Owner, nor in  
time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their per-  
sons, houses, papers, and effects, against unreasonable  
searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**[ARTICLE VIII.]**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**[ARTICLE IX.]**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**[ARTICLE X.]**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**[ARTICLE XI.]**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

**[ARTICLE XII.]**

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The Presi-

dent of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### **ARTICLE XIII.**

**SECTION 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**SECTION 2.** Congress shall have power to enforce this article by appropriate legislation.

## **ARTICLE XIV.**

**SECTION 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**SECTION 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**SECTION 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or

rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**SECTION 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**SECTION 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## **ARTICLE XV.**

**SECTION 1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

**SECTION 2.** The Congress shall have power to enforce this article by appropriate legislation.



# Constitution OF THE United States.

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**Constitutional construction.**—A constitution is an instrument of government, made and adopted by the people for practical purposes,<sup>1</sup> and can only operate prospectively.<sup>2</sup> It should be construed so as best to subserve the great objects for which it was made.<sup>3</sup> Like every other grant it is to have a reasonable construction according to the import of its terms,<sup>4</sup> as defined in the vocabulary of the nation which adopted it.<sup>5</sup> Courts of justice cannot give it a strained construction, and they are not authorized to so construe any clause as to defeat its obvious ends when another construction, equally accordant with the words and sense, will enforce and protect them.<sup>7</sup> So, where words admit of different intendments, that must be selected which is most consonant to the object in view.<sup>8</sup> It should be so construed as to give effect to its different clauses, as far as possible reconcile them, and not let their seeming repugnancy destroy them.<sup>9</sup> It is not to be construed technically,<sup>10</sup> but must receive a practical construction.<sup>11</sup> Perhaps the safest rule of interpretation is to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history, and to give to the words of each clause such operation and force as is consistent with its legitimate meaning,<sup>12</sup> and not nullify or evade them by astute verbal criticism without regard to the aim and objects of the instrument, and the principles on which it is based.<sup>13</sup> Courts can only construe the powers granted, they cannot inquire into the policy or principles which induced the grant.<sup>14</sup>

1 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

2 *Chicago v. Rumsey*, 87 Ill. 385.

3 *North Riv. S. Co. v. Livingston*, 3 Cow. 713; 1 *Hopk.* 150; *Hague v. Powers*, 39 Barb. 427; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

4 *Martin v. Hunter*, 1 Wheat. 304; 7 *Cranch*, 727.

5 *Kunzler v. Kohaus*, 5 Hill, 317; *Padleford v. Mayor &c.* 14 Ga. 438.

6 *Law v. People*, 87 Ill. 385.

7 *Prigg v. Commonwealth*, 16 Peters, 539.

- 8 *Aldrich v. Kinney*, 4 Conn. 380.
- 9 *Cohens v. Virginia*, 6 Wheat. 264; *Marbury v. Madison*, 1 Cranch. 138.
- 10 *People v. Dawell*, 25 Mich. 247; *Dorman v. State*, 34 Ala. 216.
- 11 *Railroad Co. v. Peniston*, 18 Wall. 5.
- 12 *Prigg v. Commonwealth*, 16 Peters, 539.
- 13 *Passenger Cases*, 7 How. 282.
- 14 *Martin v. Hunter*, 1 Wheat. 304; 7 Cranch, 727.

**Construction of terms.**—Although the spirit of the Constitution is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words.<sup>1</sup> The argument from inconvenience cannot prevail over plain words or clear reason; but a construction which would necessarily occasion public or private mischief must yield to a construction which will occasion neither.<sup>2</sup> So, a construction long carried into practice, though not sanctioned by judicial authority, is worthy of great consideration;<sup>3</sup> so, great weight is attached to contemporaneous exposition,<sup>4</sup> or where the commencement of the practice was almost coeval with the adoption of the instrument.<sup>5</sup> A case within the words of a rule must be within its operation, unless something in the literal construction is so obviously absurd or mischievous, or so repugnant to the general spirit of the instrument, as to justify an exception.<sup>6</sup> Words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.<sup>7</sup> Adherence to the letter must not be had in opposition to the reason and spirit of the enactment, and to effectuate the object intended, it may be proper to deviate from the usual sense of the words.<sup>8</sup> Every word must have its due force and appropriate meaning, and no word should be rejected as superfluous or unmeaning,<sup>9</sup> and care should be taken to reconcile words apparently discordant, in such a manner as to give, if possible, meaning to every word.<sup>10</sup> The same words have not necessarily the same meaning when found in different parts of the instrument, and the peculiar sense in which a word is used is to be determined by the context,<sup>11</sup> unless the meaning is completely ascertained.<sup>12</sup> Affirmative words are often in their operation negative of other objects than those affirmed, but they should not be construed negatively where they have full operation without such construction.<sup>13</sup> The exception of a thing from the general words proves that the thing excepted would be within the general clause had the exception not been made.<sup>14</sup> See Supplement, *post*, 289.

1 *Sturges v. Crowninshield*, 4 Wheat. 122.

2 *Ex parte Griffin*, Chase, 364; 25 Tex. Supp. 623.

3 *Martin v. Hunter*, 1 Wheat. 304; *McCulloch v. Maryland*, 4 Wheat. 316; *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169; *Briscoe v. Bank of Ky.* 11 Peters, 257; *Cooley v. Port Wardens*, 12 How. 299; *Adams v. Story*, 1 Paine, 79; *Hicks v. Hotchkiss*, 7 Johns. Ch. 297; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

4 *Cohens v. Virginia*, 6 Wheat. 264.

5 *Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; *Ogden v. Saunders*, 12 Wheat. 213; *Prigg v. Commonwealth*, 16 Peters, 539; *Jack v. Martin*, 12 Wend. 311; 14 Wend. 507.

6 *Dartmouth College v. Woodward*, 4 Wheat. 518; *Aldrich v. Kinney*, 4 Conn. 380.

7 *Martin v. Hunter*, 1 Wheat. 304; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

8 *Aldrich v. Kinney*, 4 Conn. 380.

9 *Holmes v. Jennison*, 14 Peters, 540; *Hitchcock v. Aiken*, 1 Caines, 460; *State v. Scott*, 9 Ark. 270.

10 *Curtis v. Gibbs*, 2 N. J. 405.

11 *Cherokee Nation v. Georgia*, 5 Peters, 1; *Wheaton v. Peters*, 8 Peters, 531.

12 *U. S. v. Burr*, 2 Whart. Cr. Cas. 573.

13 *Cohens v. Virginia*, 6 Wheat. 264; *Marbury v. Madison*, 1 Cranch, 137.

14 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150; *Brown v. State*, 12 Wheat. 419.

## PREAMBLE.

*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

**The people of the United States.**—The body of electors composing the State,<sup>1</sup> people and citizens being synonymous terms, both describing the political body who form the sovereignty, hold the power and conduct the Government through their representatives, the sovereign people, every citizen being a constituent member.<sup>2</sup> Freemen of color were a part of the people.<sup>3</sup> The people of the United States had the power to invest the General Government with all the powers they might deem proper and necessary, and to prohibit to the States the exercise of any powers incompatible with the objects of the general compact,<sup>4</sup> and to resume or modify the powers granted.<sup>5</sup>

1 *Penhallow v. Doane*, 3 Dall. 93.

2 *Scott v. Sandford*, 19 How. 404.

3 *Scott v. Sandford*, 19 How. 573, per Curtis, J.; *U. S. v. Rhodes*, 1 Abb. U. S. 41; *North Carolina v. Manuel*, 4 Dev. & B. 20.

4 *Martin v. Hunter*, 1 Wheat. 325.

5 *McCulloch v. Maryland*, 4 Wheat. 404.

**More perfect union.**—This phrase recognizes a political body known as the United States.<sup>1</sup> “In order to form a more perfect union” by substituting a National Government, acting with ample powers directly upon the citizen, instead of the Confederate Government, which acted with powers greatly restricted, and only upon the States.<sup>8</sup> It is the union of States under a common constitution which forms the distinct and greater political unit designated as the United States,<sup>4</sup> by a compact made by the people of the United States to govern themselves as to general objects in a certain manner;<sup>5</sup> a government emanating from the people;<sup>6</sup> the creation of their will, and existing only by their will;<sup>7</sup> and for certain purposes, a consolidated government;<sup>8</sup> a body politic and corporate.<sup>9</sup> It is a Government of delegated powers alone, limited in number but not in degree, and supreme within the scope of its delegated powers,<sup>10</sup> with absolute sovereignty to the extent of its powers,<sup>11</sup> the sovereignty being separate and distinct from State sovereignty,<sup>12</sup> the State constitutions being limitations on sovereign powers already existing.<sup>13</sup>

1 *Texas v. White*, 7 Wall. 727.

2 *Chisholm v. Georgia*, 2 Dall. 463; *McCulloch v. Maryland*, 4 Wheat. 316; *Rhode Island v. Massachusetts*, 12 Peters, 657; *U. S. v. Cruikshank*, 92 U. S. 530.

3 *Lane Co. v. Oregon*, 7 Wall. 71; *Collector v. Day*, 11 Wall. 125.

4 *Texas v. White*, 7 Wall. 721.

5 *Chisholm v. Georgia*, 2 Dall. 463.

6 *McCulloch v. Maryland*, 4 Wheat. 316.

7 *Cohens v. Virginia*, 6 Wheat. 264.

8 *North River S. Co. v. Livingston*, 3 Cowen, 713.

9 *Duncan v. U. S.* 3 Wheat. 181; *U. S. v. Tingey*, 5 Peters, 128; *U. S. v. Bradley*, 10 Peters, 343; *Nelson v. Lagow*, 12 How. 108; *Dixon v. U. S.* 1 Brock. 177; *U. S. v. Maurice*, 2 Brock. 109; *U. S. v. Lane*, 3 McLean, 365; *Stearns v. U. S.* 2 Paine, 301; *Dikes v. Miller*, 25 Tex. Supp. 290.

10 *U. S. v. Cruikshank*, 92 U. S. 550; *McCulloch v. Maryland*, 4 Wheat. 316; *Scott v. Sandford*, 19 How. 393; *Ableman v. Booth*, 21 How. 506; *Lane Co. v. Oregon*, 7 Wall. 76. See Supplement, *post*, 289.

11 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 407.

12 *Martin v. Hunter*, 1 Wheat. 304; *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 190; *Ableman v. Booth*, 21 How. 506; *Newell v. People*, 7 N. Y. 93; *People v. N. Y. Cent. R. R. Co.* 24 N. Y. 486; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 411.

13 *Ohio Life Ins. Co. v. Debolt*, 16 How. 428.

**To provide for the common defense** is an absolute right of every nationality.<sup>1</sup> The Constitution was "ordained and established" by "the people" for themselves, and their own government, and not for the government of the individual States;<sup>2</sup> and not by the States, but by the people of the United States,<sup>3</sup> acting through delegates by whom they were represented,<sup>4</sup> and resulted neither from the majority of the people nor of the States.<sup>5</sup> It did not go into effect until the first Wednesday in March, 1789.<sup>6</sup>

1 *Ex parte Coupland*, 26 Tex. 393.

2 *Barron v. Baltimore*, 7 Peters, 343; *Withers v. Buckley*, 21 How. 84; *Twitchell v. Commonwealth*, 7 Wall. 326; *U. S. v. Cruikshank*, 92 U. S. 559.

3 *Chisholm v. Georgia*, 2 Dall. 463; *Martin v. Hunter*, 1 Wheat. 324; *Banks v. Greenleaf*, 6 Call, 277.

4 *Worcester v. Georgia*, 6 Peters, 569; *Barron v. Baltimore*, 7 Peters, 243.

5 *Ware v. Hylton*, 3 Dall. 199; *Chisholm v. Georgia*, 3 Dall. 419.

6 *Owings v. Speed*, 5 Wheat. 420.

**Powers of government.**—The Federal Government is one of enumerated powers<sup>1</sup>—of delegated powers.<sup>2</sup> The sovereignty of Congress, though limited to specific objects, is plenary as to those objects,<sup>3</sup> and supreme in its sphere.<sup>4</sup> The powers of government in the United States and in the States are separate and distinct, although they may act on the same subject;<sup>5</sup> but in case of conflict, that of the United States Government is supreme.<sup>6</sup> The Government is constituted with its legislative, judicial, and executive departments, to act directly on the people without the intervention of the State governments.<sup>7</sup> The powers of Congress are not exclusive except where the Constitution expressly in terms so provides, or where they are prohibited to the States, or where there is a direct repugnance or incompatibility in their exercise by the States.<sup>8</sup> The exercise by a State of a concurrent power must yield when it conflicts with, or is repugnant to, congressional legislation.<sup>9</sup>

1 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*. 9 Wheat. 1.

2 *Briscoe v. Bk. of Ky.* 11 Peters, 257; 7 J. J. Marsh. 349.

3 *Gibbons v. Ogden*. 9 Wheat. 1.

4 *McCulloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank of U. S.* 9 Wheat. 738; *Fraser v. State*, 3 Tex. Ct. App. 273; *Ableman v. Booth*, 21 How. 506; *Field v. Close*, 15 Mich. 505; *State v. Garton*, 32 Ind. 1; *State v. Gibson*, 36 Ind. 389; *People v. Brady*, 40 Cal. 193; *Lane Co. v. Oregon*, 7 Walk. 76; *U. S. v. Cruikshank*, 92 U. S. 542; *1 Woods*, 308; *Bradwell v. State*, 16 Wall. 130; *Gibbons v. Ogden*, 9 Wheat. 203.

5 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 1; *Osborn v. Bank of U. S.* 9 Wheat. 738; *Brown v. Maryland*, 12 Wheat. 419; *Weston v. Charleston*, 2 Peters, 449; *Dobbins v. Commrs. Erie Co.* 16 Peters, 435; *Collector v. Day*, 11 Wall. 113; *National Bank v. Commonwealth*, 9 Wall. 353; *Sweatt v. Boston &c. R. R. Co.* 5 Bank Reg. 249; *Passenger Cases*, 7 How. 282; *Tarble's Case*, 13 Wall. 397.

6 *Tarble's Case*, 13 Wall. 397; *Matter of Farrand*, 1 Abb. U. S. 146.

7 *Ex parte Stephens*, 70 Mass. 559.

8 *Calder v. Bull*, 3 Dall. 386; *U. S. v. Bevens*, 3 Wheat. 389; *Sturges v. Crowninshield*, 4 Wheat. 193; *Peck's Trial*, 86; *U. S. v. Fisher*, 2 Cranch, 358; 1 Wash. C. C. 4; *Houston v. Moore*, 5 Wheat. 49; 3 Serg. & R. 179; *Willson v. Blackbird &c. Co.* 2 Peters, 245; *New York v. Miln*, 11 Peters, 103; *Holmes v. Jennison*, 14 Peters, 540; *Groves v. Slaughter*, 15 Peters, 507; *Prigg v. Commonwealth*, 16 Peters, 627; *Passenger Cases*, 7 How. 555; *McVeigh v. U. S.* 11 Wall. 259; *U. S. v. New Bedford Bridge*, 1 Wood & M. 432; *Commonwealth v. O'Hara*, 1 Bank. Reg. Sup. 20; *Livingston v. Van Ingen*, 9 Johns. 568; *Groves v. Slaughter*, 15 Peters, 504. But see *The Chusan*, 2 Story, 465; *Golden v. Prince*, 3 Wash. C. C. 313.

9 *Gibbons v. Ogden*, 9 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419; *Worcester v. Georgia*, 6 Peters, 515; *Holmes v. Jennison*, 14 Peters, 540; *U. S. v. Hart*, Peters C. C. 390; *U. S. v. New Bedford Bridge*, 1 Wood & M. 418; *Commonwealth v. Kimball*, 24 Pick. 359.

## ARTICLE I.

### LEGISLATIVE DEPARTMENT.

#### SECTION 1.

##### *Legislative power, Congress.*

**Sec. 1.** *All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

**The branches** of the Government are distinct and independent, and cannot encroach upon each other.<sup>1</sup> The political power is not subject to judicial interference.<sup>2</sup>

1 *Hayburn's Case*, 2 Dall. 409, note.

2 *Pullan v. Kinsinger*, 2 Abb. U. S. 110; *Ralston v. Oursler*, 12 Ohio St. 105.

#### SECTION 2.

##### *House of Representatives.*

1. Members, when and by whom chosen.
2. Qualifications.
3. Apportionment of Representatives, and direct taxes.
4. Vacancies.
5. Speaker. Impeachment.

**Sec. 2.** *The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.*

**Electors.**—Citizenship does not of itself give the right to vote, nor the want of it prevent a State from conferring the right.<sup>1</sup> See Supplement, *post*, 289.

1 *Scott v. Sandford*, 19 How. 404.

<sup>2</sup> *No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.*

**Qualifications.**—The qualification of age is not necessary for membership, but a qualification of long citizenship and of residence.<sup>1</sup> An inhabitant is a *bona fide* member of the State, subject to all the requisites of law, and entitled to all privileges and advantages under the law;<sup>2</sup> actual residence is not essential,<sup>3</sup> as if a person be a minister resident at a foreign port.<sup>4</sup> No additional qualifications can rightfully be required by the States.<sup>5</sup> The ineligibility of the member elect gives no claim to the next highest candidate.<sup>6</sup>

1 *Smith's Case*, 1 Am. L. J. 459.

2 *Bailey's Case*, Clark & H. 411.

3 *Piggott's Case*, Cont. El. Cas. 1864-5, 464.

4 *Forsyth's Case*, Clark & H. 497; *Key's Case*, Id. 224; *Ramsay v. Smith*, Id. 23.

5 *Barney v. McCreery*, Clark & H. 176; *Turney v. Marshall*, Cont. El. Cas. 1864-5, 167.

6 *In re Corliss*, 16 Am. L. R. 15; *Smith v. Brown*, Cont. El. Cas. 1865-71, 325; *Blakey v. Golladay*, Id. 417; *Christy's Case*, Id. 464; *Jones v. Mann*, Id. 471.

<sup>3</sup> *Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode*

*Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.*

**Construction.**—This clause was not intended to create an exemption of any State from its due share of the burden, or to make taxation dependent on representation, but to furnish a standard for the apportionment of each on the States.<sup>1</sup> It is expressly confined to the States, and creates no necessity for extending the tax to the District of Columbia or the Territories,<sup>2</sup> where direct taxes are to be in proportion to the census.<sup>3</sup> The term “direct taxes” does not include a tax on notes of State banks, nor on incomes.<sup>4</sup> The “succession tax” is not a “direct tax,” but an impost or excise.<sup>5</sup> “Direct taxes” include capitation taxes and taxes on land.<sup>6</sup> The eighth census as to apportionment did not take effect till March, 1863.<sup>7</sup>

1 Loughborough v. Blake, 5 Wheat. 317.

2 Loughborough v. Blake, 5 Wheat. 317.

3 Loughborough v. Blake, 5 Wheat. 317.

4 Pacific Insurance Co. v. Soule, 7 Wall. 446; Veazie Bank v. Fenno, 8 Wall. 546; Clark v. Sickel, 14 Int. Rev. Rec. 6.

5 Scholey v. Rew, 23 Wall. 331.

6 Hylton v. U. S., 3 Dall. 171; Scholey v. Rew, 23 Wall. 347; License Tax Cas., 5 Wall. 477.

7 Lowe's Case, Cont. El. Cas. 1864-5, 418. See Article 1, Sec. 9 (4).

*<sup>4</sup>When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.*

**Vacancies** may be created by death, resignation, or removal, or by the acceptance of an incompatible office.<sup>1</sup> A resignation sent to the governor of a State is sufficient.<sup>2</sup> The executive may issue writs for a new election without waiting to be informed by the House that a vacancy exists.<sup>3</sup> A member with the governor's certificate is not permitted to take his seat before the organization of the House.<sup>4</sup> The seat of a Senator holding under executive appointment is vacated if the legislature fails to elect.<sup>5</sup>

1 People v. Carrique, 2 Hill, 93; Powell v. Wilson, 16 Tex. 60; Biencourt v. Parker, 27 Tex. 552.

2 Edward's Case, Clark & H. 92; Mercer's Case, Ibid. 44; Bledsoe's Case, Ibid. 869.

3 Mercer's Case, Clark & H. 44.

4 New Jersey Case, Cont. El. Cas. 1864-5, 19.

5 Williams' Case, Cont. El. 1864-5, 612; Phelps' Case, Ibid. 613.



*<sup>6</sup> The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.*

### SECTION 3.

#### *Senate.*

1. Senators.
2. Divided into classes. Vacancies.
3. Qualifications.
4. President of Senate.
5. Other officers.
6. Impeachment.
7. Judgment on impeachment.

**Sec. 3.** *<sup>1</sup> The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.*

*<sup>2</sup> Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

The executive of a State cannot appoint a Senator to fill a vacancy during the recess of the legislature.

*Lanman's Case, Clark & H. 871. See Supplement, post, 239.*

*<sup>3</sup> No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.*

A Senator must be a male citizen,<sup>1</sup> and nine years a citizen at the commencement of the term.<sup>2</sup> The State cannot add to the qualifications prescribed in the Constitution.<sup>3</sup> One who was a resident of the United States at the close of the Revolutionary War, and an alien, was not qualified to sit in the U. S. Senate.<sup>4</sup>

<sup>1</sup> Gallatin's Case, Clark & H. 851.

<sup>2</sup> Gallatin's Case, Clark & H. 851; Shield's Case, Cont. El. Cas. 1864-5, 606.

<sup>3</sup> Trumbull's Case, Cont. El. Cas. 1864-5, 618.

<sup>4</sup> Gallatin's Case, Clark & H. 851.

*<sup>4</sup> The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.*

*<sup>5</sup> The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.*

*<sup>6</sup> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.*

Form of oath, see Chase's Trial, p. 12.

*<sup>7</sup> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.*

#### SECTION 4.

##### *Congress.*

1. Elections for Senators and Representatives.
2. Sessions of Congress.

**Sec. 4.** *<sup>1</sup> The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.*

**Elections to Congress.**—When the legislature shall have failed to prescribe the “times, places, and manner,” the governor may give notice of the times and places of elections,<sup>1</sup> but he cannot delegate to another the power to fix the time.<sup>2</sup> When the constitution fixes the day of election, an act fixing a different day must yield;<sup>3</sup> otherwise as to the place of election.<sup>4</sup> The failure of Congress to exercise its power in no way impairs the force of the constitutional grant.<sup>5</sup> The State may regulate the elect-

ive franchise,<sup>6</sup> and it is only when discrimination at elections is made as to race, color, or condition, that Congress can interfere.<sup>7</sup> The act of the Delaware legislature requiring a ballot to contain two names, one not a resident of the same county with the voter, is constitutional.<sup>8</sup> The Oregon constitution fixes the time of election of Representative beyond the control of the Legislature.<sup>9</sup> A Territory is not entitled to a Representative as a State until admitted, although a constitution has been adopted.<sup>10</sup> The term of a Delegate expires with the Congress in which he took his seat.<sup>11</sup> But erecting a Territory into a State does not necessarily vacate the seat of the Delegate.<sup>12</sup> The failure of a legislature to provide for a vacancy or election to fill it, is cured by the governor's proclamation for it.<sup>13</sup> A vacancy by an executive appointed to the Senate again becomes a vacancy when the State legislature, subsequent to such appointment, meets and adjourns without electing.<sup>14</sup> Such appointee has a right to sit till his successor is elected or appointed and presents his credentials.<sup>15</sup> An election on the general ticket is valid,<sup>16</sup> and a tie vote is to be determined by Congress and not by State authorities.<sup>17</sup> See Supplement, *post*, 239.

1 Hoge's Case, Clark & H. 135.

2 Graffin's Case, Cont. El. Cas. 1864-5, 464.

3 Shiel v. Thayer, Cont. El. Cas. 1864-5, 349.

4 Baldwin v. Trowbridge, Const. El. Cas. 1865-71, 46.

5 Quinn's Case, 12 Int. Rev. Rec. 151.

6 Burch's Case, Cont. El. Cas. 1865-71, 205.

7 U. S. v. Reese, 92 U. S. 218.

8 Latimer v. Patton, 1 Cong. El. Cas. 69.

9 Shiel v. Thayer, 2 Cong. El. Cas. 349.

10 Conway v. U. S. 1 Nott & H. 68.

11 Doty v. Jones, 2 Cong. El. Cas. 16.

12 Fearing's Case, 1 Cong. El. Cas. 127.

13 Hoge's Case, 1 Cong. El. Cas. 349.

14 Williams' Case, 2 Cong. El. Cas. 612; Phelps' Case, *Ibid*, 613.

15 Winthrop's Case, 2 Cong. El. Cas. 607.

16 Phelps & Cavanaugh's Case, 2 Cong. El. Cas. 248; New Hampshire Case, *Ibid*. 47.

17 Reed & Cosden's Case, 1 Cong. El. Cas. 353.

<sup>2</sup> *The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

## SECTION 5.

*Powers of Houses of Congress.*

1. Judges of qualifications of their own members. Quorum.
2. Rules of proceeding. Expulsions.
3. Journals.
4. Adjournments.

**Sec. 5.** <sup>1</sup>*Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.*

**Qualifications of members.**—Whether a Senator has been regularly elected is a question exclusively for the Senate.<sup>1</sup> Members elected for an extra or special session must give way to regularly elected members for that Congress.<sup>2</sup> The House is to judge of the election of its members, and the returns are only *prima facie* evidence of election.<sup>3</sup> A State law requiring votes to be returned within a certain time is directory only,<sup>4</sup> and if not so returned are to be counted, if opportunity is had to count them.<sup>5</sup> The refusal of the executive of a State to grant a certificate of election will not prejudice the right to a seat.<sup>6</sup> The certificate may be followed by another under a changed condition of the facts.<sup>7</sup> A certificate may issue on an amended return of votes,<sup>8</sup> and a supplementary return is entitled to be received.<sup>9</sup> The governor may revoke the certificate for fraud.<sup>10</sup> One holding a certificate from the governor of a Territory, given in lieu of a former certificate superseded for fraud, is entitled to his seat.<sup>11</sup> The territorial government must be in existence before a Delegate can be admitted.<sup>12</sup> A certificate of the governor of a Territory issued in violation of law is not even *prima facie* evidence.<sup>13</sup> *The qualifications of members* being fixed by the Constitution, additions cannot be required by State legislation or other acts.<sup>14</sup> If the House is unable to decide which of two is entitled to his seat, it must be declared vacant.<sup>15</sup> One who was allowed to take his seat on a *prima facie* case, but was afterwards ousted by a competitor rightfully elected, cannot be deemed to have been a member of Congress.<sup>16</sup>

1 Anonymous, 12 Fla. 686.

2 Gehlson & Claiborne's Case, 2 Cong. El. Cas. 9.

3 Chrisman v. Anderson, 2 Cong. El. Cas. 328; Spaulding v. Mead, 1 Ibid. 157.

- 4 *Brockenborough v. Cabell*, 2 Cong. El. Cas. 79.
- 5 *Richard's Case*, 1 Cong. El. Cas. 95.
- 6 *Richard's Case*, Clark & H. 95; *Clement's Case*, Cont. El. Cas. 1864-5, 366.
- 7 *Wallace v. Simpson*, Cont. El. Cas. 1865-71, 552.
- 8 *Sleeper v. Rice*, Cont. El. Cas. 1864-5, 472.
- 9 *Archer v. Allen*, 2 Cong. El. Cas. 169; *Brockenborough v. Cabell*, *Ibid.* 84.
- 10 *Morton v. Daily*, 2 Cong. El. Cas. 403.
- 11 *Morton v. Daily*, 2 Cong. El. Cas. 403.
- 12 *Smith's Case*, Cont. El. Cas. 1864-5, 109; *Babbitt's Case*, *Ibid.* 116; *Messervey's Case*, *Ibid.* 146.
- 13 *Colorado Case*, Cont. El. Cas. 1865-71, 164.
- 14 *Barney v. McCreery*, 1 Cong. El. Cas. 167; *Turney v. Marshall*, 2 Cong. El. Cas. 167; *Trumbull's Case*, *Ibid.* 618.
- 15 *Letcher v. Moore*, 1 Cong. El. Cas. 715.
- 16 *Bowman v. Coffroth*, 59 Pa. St. 19.

*<sup>2</sup> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.*

**Rules of its proceedings.**—An express power to make laws was not necessary to enable the legislature to make them.<sup>1</sup> The express grant of power to punish for a contempt does not exclude the power to punish others than members of their own body,<sup>2</sup> in secret as in open session.<sup>3</sup> The implied power to punish for contempt shall not extend beyond its known and acknowledged limit of fine and imprisonment, but the imprisonment must terminate with the adjournment.<sup>4</sup> The power to punish for disobedience and contempt is a necessary incident to the power to require and compel attendance.<sup>5</sup> The warrant to commit for contempt may be served anywhere within the boundaries of the United States,<sup>6</sup> and it need not set forth the facts constituting the alleged contempt,<sup>7</sup> the legislative body being the only judge of its own privileges and contempts.<sup>8</sup> A member may be expelled for any misdemeanor which, though not punishable by statute, is inconsistent with the trust and duty of a member.<sup>9</sup>

1 *McCulloch v. Maryland*, 4 Wheat. 316.

2 *Anderson v. Dunn*, 6 Wheat. 204; *Bolton v. Martin*, 1 Dall. 296; *Nugent's Case*, 1 Amer. Law J. 139.

3 *Nugent's Case*, 1 Amer. Law J. 139.

4 *Anderson v. Dunn*, 6 Wheat. 204.

5 *Stewart v. Blaine*, 1 McAr. 453; *Anderson v. Dunn*, 6 Wheat. 204; *Wickelhausen v. Willett*, 10 Abb. Pr. 164.

6 *Anderson v. Dunn*, 6 Wheat. 204.

7 *Ex parte Nugent*, 1 Amer. Law J. N. S. 107.

8 *Ex parte Nugent*, 1 Amer. Law J. N. S. 107.

9 *Smith's Case*, 1 Hall Law J. 459.

See Supplement, *post*, 290.

<sup>8</sup> *Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.*

**Journal.**—A journal is a public record, of which courts may take judicial notice.<sup>1</sup> The journal cannot be kept secret unless the proceedings are secret. The holding of a secret session by either House is in its discretion.<sup>2</sup>

1 *Brown v. Nash*, 1 Wyo. 85.

2 *Nugent's Case*, 1 Am. L. J. N. S. 139.

<sup>4</sup> *Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.*

#### SECTION 6.

##### *Compensation and duties of members.*

1. Compensation of members. Privileges of Senators and Representatives.
2. Ineligibility to United States offices.

**Sec. 6.** <sup>1</sup>*The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.*

**Privilege from arrest.**—Arrest implies corporal restraint.<sup>1</sup> The privilege from arrest could not be surrendered without endangering the public as well as the private independence of the member.<sup>2</sup> It extends to judicial as well as mesne process, and a person arrested is entitled to his discharge on the privilege afterwards acquired,<sup>3</sup> but there is no privilege from the service or

obligation of a subpoena in a criminal case.<sup>4</sup> It applies to a delegate from a Territory as well as to a member from a State.<sup>5</sup> One who goes to Washington duly commissioned is privileged, though it be subsequently decided by Congress that he is not entitled to a seat.<sup>6</sup> The privilege is to be taken strictly, and he allowed only during attendance on Congress, or while actually on the journey to or from the seat of Government.<sup>7</sup> It is limited to a convenient and reasonable time in addition to the actual session.<sup>8</sup> Members are privileged not only from arrest, but also from a service of summons or other civil process while in attendance on their public duties.<sup>9</sup> The privilege applies to speech or debate in either House,<sup>10</sup> but does not cover its publication by a member.<sup>11</sup> See Supplement, *post*, 290.

1 Wooley v. Butler, 1 Bank. L. T. 35.

2 Bolton v. Martin, 1 Dall. 296; Coffin v. Coffin, 4 Mass. 1.

3 Cox v. McClenachan, 3 Dall. 478; Nones v. Edsall, 1 Wall. Jr. 189.

4 U. S. v. Cooper, 4 Dall. 341.

5 Doty v. Strong, 1 Pinney, Wis. 88.

6 Dunton v. Halstead, 4 Pa. L. J. 237.

7 Lewis v. Elmendorf, 2 Johns. Cas. 222; McCulloch v. Maryland, 4 Wheat. 316.

8 Hoppin v. Jenckes, 8 R. I. 453.

9 Coxe v. McClenachan, 3 Dall. 478; Goyer v. Irwin, 4 Dall. 107; Nones v. Edsall, 1 Wall. Jr. 191.

10 Anderson v. Dunn, 6 Wheat. 215.

11 Coffin v. Coffin, 4 Mass. 1.

*<sup>2</sup> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.*

**Incompatible offices.**—The appointment to a second incompatible office is not absolutely void, but the first office is *ipso facto* vacated.<sup>1</sup> The acceptance by a member of any office under the United States after a member has taken his seat, operates as a forfeiture of his seat,<sup>2</sup> but continuance in an office after election to Congress, and until taking his seat, is not a disqualification if a resignation is made prior to taking his seat.<sup>3</sup> The acceptance of a military appointment vacates the seat.<sup>4</sup> A person hold-

ing two compatible offices is not precluded from receiving the salaries of both.<sup>5</sup> See Supplement, *post*, 290.

1 *People v. Carrique*, 2 Hill, 93; *Blencourt v. Parker*, 27 Tex. 558.

2 *Van Ness' Case*, Clark & H. 122.

3 *Hammond v. Herrick*, Clark & H. 287; *Earle's Case*, *Ibid.* 314; *Mumford's Case*, *Ibid.* 316.

4 *Baker's Case*, Cont. El. Cas. 1864-5, 92; *Yell's Case*, *Ibid.* 94; *Byington v. Van Lever*, *Ibid.* 395; *Stanton v. Lane*, 2 *Ibid.* 637.

5 *Converse v. U. S.* 21 How. 463; *Brown's Case*, 9 Opin. Att. Gen. 503.

## SECTION 7.

### *Enactment of laws*

1. Revenue bills. Where to originate.

2. Manner of passage. How passed without President's approval.

3. Orders, resolutions, and votes. President's approval.

**Sec. 7.** <sup>1</sup>*All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.*

**Revenue.**—The House has the sole power to originate bills for taxation.<sup>1</sup> A bill establishing rates of postage is not a bill for raising revenue.<sup>2</sup>

1 *S. & V. R. R. Co. v. Stockton*, 41 Cal. 165.

2 *U. S. v. James*, 13 Blatchf. 207.

<sup>2</sup>*Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.*



**Course of proceeding by which a bill becomes a law.**<sup>1</sup> The President must receive the bill ten entire days before adjournment, or it will not become a law.<sup>2</sup> If the President approves the bill he shall sign it; he need not indorse on the bill the word "approved," nor need he date it.<sup>3</sup> A bill becomes a law either by the signing of the bill by the President, or by his retaining it for ten days without signing.<sup>4</sup> Every bill approved by the President takes effect as a law only by such approval and from the time of such approval;<sup>5</sup> but the legislature may prescribe the very moment, in the future, after the approval, when the law shall take effect,<sup>6</sup> and when no time is fixed, it takes effect from its date.<sup>7</sup> As to when a law takes effect, there are no parts or divisions of a day,<sup>8</sup> but fractions of a day may be allowed when substantial justice requires it.<sup>9</sup> In case of doubt the time should be construed favorably to the citizens.<sup>10</sup> An act compared by the proper officer, approved by the President, and enrolled in the Department of State, cannot afterwards be impugned by evidence to alter or contradict it.<sup>11</sup> Courts take judicial notice of a general statute—it is not to be proved as an issue of fact.<sup>12</sup> See Supplement, *post*, 291.

1 McCulloch v. Maryland, 4 Wheat. 412.

2 Hyde v. White, 24 Tex. 145.

3 Gardner v. Collector, 6 Wall. 499.

4 Gardner v. Collector, 6 Wall. 499.

5 In re Richardson, 2 Story, 571. And see Gardner v. Collector, 6 Wall. 499.

6 In re Richardson, 2 Story, 571.

7 Matthews v. Zane, 7 Wheat. 164; In re Ankrim, 3 McLean, 285; Warren Manuf. Co. v. Etna Ins. Co., 2 Paine, 501.

8 Matt. of Wellman, 20 Vt. 661; Arnold v. U. S., 9 Cranch, 119; 1 Gall. 348.

9 In re Wynne, 1 Chase, 227; 4 Bank Reg. 5; In re Ankrim, 3 McLean, 285; In re Richardson, 3 Story, 571. But see U. S. v. Williams, 1 Paine, 261; Wellman's Case, 20 Vt. 661; In re Howes, 21 Vt. 619.

10 In re Richardson, 2 Story, 571.

11 Thompsons' Case, 9 Op. Att. Gen. 3.

12 Gardner v. Collector, 6 Wall. 499.

*3 Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House*

*of Representatives, according to the rules and limitations prescribed in the case of a bill.*

**Construction.**—This clause does not apply to a proposal for amendment to the Constitution.<sup>1</sup> A joint resolution approved by the President, or duly passed with his approval, has the effect of a law.<sup>2</sup>

1 Hollingsworth v. Virginia, 3 Dall. 378.

2 Resolutions of Congress, 6 Op. Att. Gen. 680.

## SECTION 8.

### *Powers of Congress.*

1. Taxes, duties, etc. Common defense and general welfare.
2. To borrow money.
3. To regulate commerce.
4. Naturalization. Bankruptcies.
5. Coining money. Weights and measures.
6. Punishment of counterfeiting.
7. Post-offices and post-roads.
8. Patents and copyrights.
9. Courts.
10. Piracy and other offenses.
11. To declare war, etc
12. Raising army.
13. Navy.
14. Army and navy regulations.
15. Militia. Insurrections, etc.
16. Organizing, arming, and disciplining militia.
17. Exclusive legislative power over seat of Government, forts, etc.
18. To make laws necessary to carry powers into effect.

**Sec. 8.** *1The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.*

**Legislative powers.**—Powers actually granted must be such as are expressly given, or given by necessary implication.<sup>1</sup> The existence of a power should not be denied because it may be abused by its exercise, nor should it be presumed that abuses will take place.<sup>2</sup> Legislative powers must be construed and applied with reference to the purposes for which the Constitution was made,<sup>3</sup> and when the general purpose of the instrument is ascertained, the language is to be construed, as far as possible, as subservient to that purpose.<sup>4</sup> They are to be exercised in discretion.<sup>5</sup> The question of power does not depend on degree to which it may be exercised.<sup>6</sup> The existence of a power may be fairly deduced from more than one of the substantive powers expressly defined upon them all com-

bined.<sup>8</sup> The powers conferred upon Congress must be regarded as relative to each other, and all means for a common end.<sup>8</sup> The exception from a power marks its existence.<sup>9</sup> When Congress have the power to do the same act by virtue of distinct powers, they may exercise which they please; and when they profess to act under one power there is no necessity to resort to another.<sup>10</sup> No power in itself substantive can be exercised or contravened by action under an incidental power.<sup>11</sup> Although Congress cannot enable a State to legislate, it may adopt State legislation.<sup>12</sup> With respect to subjects of legislation either expressly or impliedly delegated, Congress possesses an omnipotence equal to that of any other supreme legislative body,<sup>13</sup> and no distinction can be made between the nature of the power and the nature of the subject on which that power may operate.<sup>14</sup> The Constitution does not forbid Congress to pass laws impairing the obligations of contracts.<sup>15</sup> An act of Congress passed for the purpose of impairing the obligation of a contract would be void; but if the primary object of the act is within any of its granted powers it is valid.<sup>16</sup> Congress may consent to a second trial of a claim against the United States, although judgment thereon has been rendered in favor of the Government.<sup>17</sup> See *post*, 291.

1 *Martin v. Hunter*, 1 Wheat. 326; 7 Cranch, 727.

2 *Kneidler v. Lane*, 45 Pa. St. 238; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

3 *McCall v. McDowell*, Deady, 254; 1 Abb. U. S. 212.

4 *Shollenberger v. Brinton*, 52 Pa. St. 9.

5 *Martin v. Hunter*, 1 Wheat. 326; 7 Cranch, 727.

6 *Brown v. Maryland*, 12 Wheat. 419; *Martin v. Hunter*, 1 Wheat. 326; 7 Cranch, 727; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

7 *Legal Tender Cases*, 12 Wall. 457; 11 Wall. 682.

8 *Legal Tender Cases*, 12 Wall. 457; 11 Wall. 682.

9 *Gibbons v. Ogden*, 9 Wheat. 1.

10 *N. R. Steamboat Co. v. Livingston*, 3 Cowen, 713; *Thayer v. Hedges*, 23 Ind. 141; *Shollenberger v. Brinton*, 52 Pa. St. 9.

11 *Thayer v. Hedges*, 23 Ind. 141.

12 *Gibbons v. Ogden*, 9 Wheat. 1.

13 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

14 *Cooley v. Portwardens*, 12 How. 299.

15 *Satterlee v. Matthewson*, 2 Peters, 330; *Legal Tender Cases*, 12 Wall. 457; *In re Smith*, 8 Bank. Reg. 407; 5 McLean, 158; *Evans v. Eaton*, Peters C. C. 322.

16 *Evans v. Eaton*, 3 Wheat. 356; 7 Wheat. 356; Peters C. C. 322; *Legal Tender Cases*, 12 Wall. 457; *Bloomer v. Stolley*, 5 McLean, 158; *Hague v. Powers*, 39 Barb. 427; *George v. Concord*, 45 N. H. 434; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Shollenberger v. Brinton*, 52 Pa. St. 9.

17 *Nock v. U. S.* 2 Ct. Cl. 451.

**Taxation** is an incident of sovereignty.<sup>1</sup> It is the act of laying on a tax, or imposing burdens or charges on persons or property,<sup>2</sup> and attaches on all persons and property within the jurisdiction.<sup>3</sup> The power is necessarily co-extensive with the territory of the United States, operating on all persons belonging to the body politic,<sup>4</sup> and applicable to the utmost extent.<sup>5</sup> It is an express grant to Congress,<sup>6</sup> supreme and independent of State control,<sup>7</sup> the only limitation being that "duties, imposts, and excises" shall be "uniform."<sup>8</sup> "Duties" and "imposts" are synonymous, and exclusively refer to articles imported from foreign countries.<sup>9</sup> "Uniform" means the same duties at all ports in the States and Territories, and that income taxes and excises shall operate alike, including the District of Columbia.<sup>10</sup> The power of taxation includes the power to enact internal revenue laws.<sup>11</sup> The taxing power cannot be invoked in aid of enterprises strictly private,<sup>12</sup> nor for those purposes which are within the exclusive power of the individual States.<sup>13</sup> The words "welfare of the United States" do not authorize the taxation of means necessary for the exercise of State governments;<sup>14</sup> so Congress cannot tax the revenues of a municipal corporation,<sup>15</sup> nor impose an income tax on the salaries of State officers,<sup>16</sup> nor require a revenue stamp on process in State courts,<sup>17</sup> but it may impose a succession tax.<sup>18</sup> Congress may adopt any appropriate means for carrying these powers into effect, as, to build custom-houses, employ revenue cutters, appoint collectors and other officers, take official bonds, establish needful bureaus, prescribe time and manner of payment, rent or build warehouses, define crimes and their punishment, and provide for their prosecution.<sup>19</sup> Congress may impose a tax on the salaries of civil officers, except those whom Congress has no constitutional power to tax.<sup>20</sup> It has general power to impose a tax on business such as distilling, and impose penalties and forfeitures.<sup>21</sup>

1 Dobbins v. Commissioners of Erie Co. 16 Peters, 435.

2 Knowlton v. Rock Co. 9 Wis. 418.

3 Dobbins v. Commissioners of Erie Co. 16 Peters, 435.

4 Providence Bank v. Billings, 4 Peters, 514.

5 McCulloch v. Maryland, 4 Wheat. 316; S. & V. R. R. Co. v. Stockton, 41 Cal. 166.

6 McCulloch v. Maryland, 4 Wheat. 316.

7 Ableman v. Booth, 21 How. 516; Ward v. Maryland, 12 Wall. 427.

8 Hylton v. U. S. 3 Dall. 171; Gibbons v. Ogden, 9 Wheat. 199; License Tax Cases, 5 Wall. 462; U. S. v. Singer, 15 Wall. 111; Scholey v. Rew, 23 Wall. 348; Attorney-General v. Winnebago L. & F. P. R. Co. 11

Wis. 35; *Veazie Bank v. Fenno*, 8 Wall. 533; *Sav. & L. Soci. v. Austin*, 45 Cal. 477; *People v. Reynolds*, 10 Ill. 12; *People v. Salomon*, 51 Ill. 54.

9 *Hylton v. U. S.* 3 Dall. 177; *U. S. v. Tappan*, 11 Wheat. 419; *Woodruff v. Parham*, 9 Wall. 123; *Hinson v. Lott*, 8 Wall. 143.

10 *Loughborough v. Blake*, 5 Wheat. 317. See *U. S. v. Riley*, 5 Blatchf. 264.

11 *Matt of Meador*, 1 Abb. U. S. 334.

12 *Loan Asso. v. Topeka*, 20 Wall. 663; *In re Mayor of N. Y.* 11 Johns. 80; *Broadhead v. Milwaukee*, 19 Wis. 624; *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 173.

13 *Gibbons v. Ogden*, 9 Wheat. 199.

14 *Collector v. Day*, 11 Wall. 125; *U. S. v. Railroad Co.* 17 Wall. 322; *Sweatt v. Boston & c. R. R. Co.* 5 Bank. Reg. 248.

15 *U. S. v. Railroad Co.* 17 Wall. 334.

16 *Dobbins v. Commrs. Erie Co.* 16 Pet. 435; *Freedman v. Sigel*, 10 Blatchf. 330; *Collector v. Day*, 11 Wall. 125; *Legal Tender Cases*, 12 Wall. 457.

17 *Fifield v. Close*, 15 Mich. 505; *Tucker v. Potter*, 35 Conn. 46.

18 *Scholey v. Rew*, 23 Wall. 331.

19 *U. S. v. Rhodes*, 1 Abb. U. S. 49.

20 *Tax on Salaries*, 13 Op. Att. Gen. 161.

21 *U. S. v. McKinley*, 4 Brewst. 246.

See Supplement, *post*, 291.

**State power of taxation.**—By the Revolution the powers of Government devolved upon the people of the United States.<sup>1</sup> The power of taxation herein conferred does not operate as a prohibition on the States, it is a power concurrent in the National and State Governments.<sup>2</sup> The taxing power of the State is an attribute of sovereignty, and exists independent of the Constitution of the United States.<sup>3</sup> The power is supreme, unless the subject be beyond the borders of the State, or as to property within the State, but ceded to the United States, and within their separate and exclusive jurisdiction, and this supremacy cannot be questioned by the judiciary.<sup>4</sup> Except as restricted by the Constitution, States have full power of taxation over all subjects,<sup>5</sup> and over aliens equally with citizens.<sup>6</sup> States are only excluded from taxation of the means and instruments employed by the General Government in the exercise of its functions,<sup>7</sup> or the instruments, emoluments, or persons, and the necessary and proper means to execute its sovereign power,<sup>8</sup> but though these are exempt, yet the States may tax the property of Government agents.<sup>9</sup> A State cannot tax United States property within its limits,<sup>10</sup> nor the compensation of a United States officer;<sup>11</sup> but a State may tax the salary of a post-office clerk.<sup>12</sup> So, a party who obtains a license to trade from the Government is not an officer.<sup>13</sup> A State cannot tax public moneys devoted to

its appropriate purposes,<sup>14</sup> nor money in the treasury, nor precious metals in the mint, nor the lots, structures, ships, materials of war, or other property devoted to the public purposes of the United States,<sup>15</sup> nor can it tax internal revenue stamps.<sup>16</sup> These exemptions depend upon the effect of the tax, whether it will hinder the efficient exercise of the powers of the Government,<sup>17</sup> but not to a tax which only remotely affects the efficient exercise of the powers of the Government.<sup>18</sup> To make a tax void the absence of all possible public interest must be clear and palpable.<sup>19</sup> A State may levy a tax to pay the commutation of persons drafted into the military service,<sup>20</sup> or to pay bounties to volunteers.<sup>21</sup> So, a State may tax shares of a railroad to which Congress has extended aid, or may tax the gross receipts of railroads,<sup>22</sup> and may provide for collecting taxes in gold or silver only.<sup>23</sup>

1 *McCulloch v. Maryland*, 4 Wheat. 316; *Dartmouth Coll. v. Woodward*, 4 Wheat. 518; *Green v. Biddle*, 8 Wheat. 1; *Ogden v. Saunders*, 12 Wheat. 213; *Cherokee Nation v. Georgia*, 5 Peters, 47.

2 *Passenger Cases*, 7 How. 571; *Perveer v. Comm.*, 5 Wall. 475; *Hamilton Comp. Mississippi*, 6 Wall. 639; *Sweatt v. Boston &c. R. R. Co.*, 5 Bank. Reg. 243; *Van Allen v. Assessors*, 3 Wall. 535.

3 *McCulloch v. Maryland*, 4 Wheat. 316; *Lane Co. v. Oregon*, 9 Wall. 77; *Railroad Co. v. Peniston*, 18 Wall. 29; *Nathan v. Louisiana*, 8 How. 73; *People v. Coleman*, 4 Cal. 43.

4 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 199; 17 Johns. 48; 4 Johns. Ch. 150; *People v. New York*, 2 Black, 620; 2 Wall. 200; 3 Id. 573; *Passenger Cases*, 7 How. 538; *Ward v. Maryland*, 12 Wall. 427; *Pullen v. Kinsinger*, 2 Abb. U. S. 112; *U. S. v. Aines*, 1 Wood. & M. 76; *Russell v. N. Y.*, 2 Denio. 461; *State Treasurer v. Wright*, 28 Ill. 509; *People v. Hawley*, 3 Mich. 330; *Elfield v. Close*, 16 Mich. 505; *People v. Mayor &c. of Brooklyn*, 4 N. Y. 425; *Scovil v. Cleveland*, 1 Ohio St. 126; *Maloy v. Marietta*, 11 Id. 638; *Weister v. Hado*, 52 Pa. St. 474; *Armington v. Barnet*, 15 Vt. 747; *Mayor &c. v. Lord*, 18 Wend. 126.

5 *Lane Co. v. Oregon*, 7 Wall. 71; *Ward v. Maryland*, 12 Wall. 430; *Loan Asso. v. Topeka*, 20 Wall. 669; *Bates v. Cooper*, 5 How. 115; *Pullen v. Kinsinger*, 2 Abb. U. S. 110; *Gashweller v. McIlvoy*, 1 A. K. Marsh. 84; *Rexford v. Knight*, 15 Barb. 627; *Rubothom v. McClure*, 4 Blackf. 505; *Hawkins v. Lawrence*, 8 Id. 226; *Bradley v. N. Y. &c. R. R. Co.* 21 Cal. 304; *Clark v. Saybrook*, 21 Conn. 313; *Russell v. N. Y.* 2 Denio, 431; *People v. Commrs.* 5 Denio, 401; *Raleigh &c. Co. v. Davis*, 2 Dev. & B. 451; *Swan v. Williams*, 2 Mich. 442; *Baker v. Johnson*, 2 Hill, 342; *People v. Hayden*, 6 Ibid. 359; *McCormick v. Town of La Fayette*, 1 Ind. 48; *Canal Co. v. Ferris*, 2 Ibid. 331; *People v. Wells*, 12 Ibid. 102; *Jackson v. Winn*, Litt. 322; *Mason v. Kennebec &c. Co.* 31 Me. 215; *People v. M. S. R. R. Co.* 3 Met. 436; *Smith v. McAdam*, Ibid. 506; *Charlestown &c. R. R. Co. v. Middlesex*, 7 Met. 78; *Mount Wash. R. R. Co.'s Petition*, 30 N. H. 135; *Bank of Chenango v. Brown*, 26 N. Y. 467; *Ligat v. Commonwealth*, 19 Pa. St. 436; *Yost's Report*, 17 Id. 524; *Mayor of Pittsburgh v. Scott*, 1 Pa. St. 309; *Bloodgood v. Mohawk Co.* 18 Wend. 9; *Mercer v. McWilliams*, Wright, 132; *Bennington v. Park*, 50 Vt. 178.

6 *Fratz's Appeal*, 52 Pa. St. 367.

7 *McCulloch v. Maryland*, 4 Wheat. 316; *Van Allen v. Assessors*, 3 Wall. 535; *Austin v. Aldermen*, 7 Wall. 699; *Banks v. Mayor*, 7 Wall. 16; *Hamilton Comp. v. Massachusetts*, 6 Wall. 639; *Dobbins v. Commrs.* of

**Erie Co. 16 Peters, 435; People v. Commrs. of Taxes, 4 Wall. 244; 35 N. Y. 423; Osborn v. Bank of U. S. 9 Wheat. 738.**

8 **Dobbins v. Commrs. of Erie Co. 16 Peters, 435; 7 Watts, 513.**

9 **Railroad Co. v. Peniston, 18 Wall. 5.**

10 **Anonymous, 9 Opin. Att. Gen. 291.**

11 **Dobbins v. Commissioners, 16 Peters, 435; 7 Watts, 513.**

12 **Melcher v. Boston, 50 Mass. 73.**

13 **State v. Bell, Phill. (N. C.) 76.**

14 **Comm. v. Morrison, 2 A. K. Marsh. 75.**

15 **City v. Churchill, 33 N. Y. 693; 43 Barb. 550.**

16 **Palfrey v. Boston, 101 Mass. 329.**

17 **Railroad Co. v. Peniston, 18 Wall. 5; National Bank v. Comm. 9 Wall. 353; Waite v. Dowley, 9 Ch. L. N. 233; Dobbins v. Commrs. 16 Peters, 435; 7 Watts, 513.**

18 **Railroad Co. v. Peniston, 18 Wall. 5.**

19 **Brodhead v. Milwaukee, 19 Wis. 624; Stockton & V. R. R. Co. v. Stockton, 41 Cal. 173; Schenley v. Alleghany, 25 Pa. St. 128.**

20 **Freeland v. Hastings, 10 Allen, 510; Wagner v. Collector, 31 N. J. 190.**

21 **Booth v. Woodbury, 32 Conn. 118; Coffman v. Keightley, 24 Ind. 509; Board v. Bearss, 25 Ind. 110; Winchester v. Corrinna, 55 Me. 9; Conner v. Folsom, 13 Minn. 219; Wilson v. Bruckman, 13 Minn. 441; State v. Jackson, 31 N. J. 189; State v. Demarest, 32 N. J. 523; Speer v. Directors, 50 Pa. St. 150; Ahl v. Gleim, 52 Pa. St. 432. But see Ferguson v. Landram, 1 Bush, 548.**

22 **Woodruff v. Parham, 8 Wall. 123.**

23 **State Treasurer v. Wright, 28 Ill. 509; Whiteaker v. Haley, 2 Or. 128.**

***2To borrow money on the credit of the United States.***

**The power to borrow** includes the power to issue the requisite securities or evidences of debt for the money borrowed,<sup>1</sup> or for capital and commodities of which money is the representative,<sup>2</sup> and to issue treasury notes under the various acts of Congress,<sup>3</sup> their issue being an exchange of credit for money or property.<sup>4</sup> Congress may constitutionally authorize the emission of bills of credit, and by suitable enactments may restrain the circulation, as money of any notes not issued by itself. In issuing paper promises to circulate as currency their makers are in effect borrowing on the credit of these promises.<sup>6</sup> Money is gold and silver, or the lawful circulating medium of the country, including bank-notes.<sup>7</sup> "On the credit" authorizes the issue of bills or notes by the Government to circulate as money, without providing for repayment of the money borrowed at any particular day, or with interest,<sup>8</sup> and to charter national banks,<sup>9</sup> and issue notes intended to circulate as money.<sup>10</sup> Congress may restrict the circulation of any notes not issued under its authority.<sup>11</sup>

1 *Hamilton Comp. v. Massachusetts*, 6 Wall. 639; *Hague v. Powers*, 39 Barb. 427; *Thayer v. Hedges*, 22 Ind. 282; *Van Huse v. Kanouse*, 13 Mich. 303; *George v. Concord*, 45 N. H. 434; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

2 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

3 *Thorndike v. T. S. & M. Co.*, 18; *Pennsylvania Cases*, 52 Pa. St. 15-100; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

4 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

5 *Veazie Bank v. Fenno*, 8 Wall. 533.

6 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

7 *Mann v. Mann*, 1 Johns. Ch. 1.

8 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

9 *McCulloch v. Maryland*, 5 Wall. 316; *Osborn v. Bank of U. S.* 9 Wheat. 738; *Weston v. Charles*, 21 Wall. 449.

10 *Bank v. Supervisors*, 7 Wall. 23.

11 *Veazie Bank v. Fenno*, 8 Wall. 533.

**Legal tenders.**—There is no express grant of power to make a credit currency a legal tender in payment of debts;<sup>1</sup> but the authority is necessarily implied,<sup>2</sup> as a means to the exercise of the functions of government.<sup>3</sup> If in the judgment of Congress it be necessary, in order to enhance the credit of the Government promises, it may make them a legal tender;<sup>4</sup> in all but cases excepted by law,<sup>5</sup> it is a necessary incident to sovereignty.<sup>6</sup> The power is not subject to mutations. It is the same in peace or in war.<sup>7</sup> The power is not to be resorted to except upon extraordinary occasions or in the exigencies of great importance.<sup>8</sup> A statute making treasury notes a legal tender is valid,<sup>9</sup> and though they are only the representatives of money,<sup>10</sup> they may be made a substitute for coin.<sup>11</sup> The provisions of the act rendering them legal tender applies to antecedent as well as subsequent contracts,<sup>12</sup> but they are not legal tenders on a contract specifically payable in gold and silver coin,<sup>13</sup> nor as to the payment of taxes, but only private contracts.<sup>14</sup> A law of Congress to change the currency in which a contract may be discharged does not impair the obligation of the contract.<sup>15</sup> A contract may be satisfied by payment of what is a legal tender at the time the debt is due.<sup>16</sup> The first legal tender act was in favor of foreign coin.<sup>17</sup>

1 *Hepburn v. Griswold*, 8 Wall. 603; 2 *Duval*, 29.

2 *Lick v. Faulkner*, 25 Cal. 404.

3 *Banks v. The Mayor*, 7 Wall. 16.

4 *Wood v. Buller*, 6 Allen, 516; *Schoenberger v. Watts*, 10 Am. Law Reg. 553; *Hague v. Powers*, 39 Barb. 427; *Lick v. Faulkner*, 25 Cal. 404; *Reynolds v. Bank of Indiana*, 18 Ind. 467; *Thayer v. Hedges*, 23 Ind. 141; *Brown v. Weston*, 26 Ind. 116; *Hontrager v. Bates*, 18 Iowa, 174; *Van Huse v. Kanouse*, 13 Mich. 303; *Warnibold v. Schlicting*, 16 Iowa, 243;



*Riddlesbarger v. McDaniel*, 38 Mo. 128; *Verges v. Giboney*, *Ibid.* 458; *Maynard v. Newmau*, 1 Nev. 271; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Shollenberger v. Brinton*, 52 Pa. St. 100; *Carpenter v. Northfield Bank*, 39 Vt. 43; *Breitenbach v. Turner*, 18 Wis. 140; *Warner v. Sauk Co.* 20 Wis. 494.

5 *Brown v. Welch*, 26 Ind. 110.

6 *Van Husen v. Kanouse*, 13 Mich. 203; *Maynard v. Newman*, 1 Nev. 271; *George v. Concord*, 45 N. H. 434; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Shollenberger v. Brinton*, 52 Pa. St. 100.

7 *Legal Tender Cases*, 12 Wall. 457; 11 Wall. 682.

8 *Legal Tender Cases*, 12 Wall. 457; 11 Wall. 682.

9 *Legal Tender Cases*, 12 Wall. 457; 11 Wall. 682; *Dooley v. Smith*, 13 Wall. 604; *Railroad Co. v. Johnson*, 15 Wall. 195; *Hague v. Powers*, 39 Barb. 427; *Lick v. Faulkner*, 25 Cal. 404; *Curlac v. Abadie*, 25 Cal. 502; *Kierski v. Matthews*, 25 Cal. 591; *Latham v. U. S.* 1 Ct. Cl. 149; 2 *Ibid.* 573; *Jones v. Harker*, 37 Ga. 503; *Black v. Lusk*, 69 Ill. 70; 18 Ind. 467; *Thayer v. Hedges*, 23 Ind. 141; *Hintrager v. Bates*, 18 Iowa, 174; *George v. Concord*, 45 N. H. 434; *Shollenberger v. Brinton*, 52 Pa. St. 100; *Murray v. Gates*, 52 Barb. 427.

10 *Griswold v. Hepburn*, 2 Duval, 46.

11 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 426.

12 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Rodes v. Bronson*, 34 N. Y. 649; *Legal Tender Cases*, 12 Wall. 457, overruling *Hepburn v. Griswold*, 8 Wall. 607, on this point. See *Willard v. Tayloe*, 8 Wall. 557; *Jones v. Harker*, 37 Ga. 503.

13 *Bronson v. Rodes*, 7 Wall. 229; *Butler v. Horwitz*, *Ibid.* 253; *Dewing v. Sears*, 11 Wall. 379.

14 *Lane Co. v. Oregon*, 7 Wall. 81; *Whitaker v. Haley*, 2 Oreg. 123; *Illinois v. Wright*, 28 Ill. 509.

15 *Fair v. Marsteller*, 2 Cranch, 20; *Mason v. Halle*, 12 Wheat. 370; *U. S. v. Robertson*, 6 Peters, 644; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

16 *U. S. v. Webster*, 2 Ware (Dav.) 43; *Shollenberger v. Brinton*, 52 Pa. St. 46.

17 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 424.

**Taxation of securities.**—The power to borrow money includes the power to exempt national securities from State taxation.<sup>1</sup> So, a State cannot tax stocks issued by the General Government for loans.<sup>2</sup> This immunity from taxation covers all Government securities, as certificates of indebtedness,<sup>3</sup> or United States bonds,<sup>4</sup> or the income derived from interest paid on United States bonds,<sup>5</sup> or foreign-held bonds;<sup>6</sup> but a State law imposing a tax on bonds and stocks of a foreign corporation, owned in the State, is valid;<sup>7</sup> so, States may tax estates though composed of United States securities,<sup>8</sup> but not the capital of a corporation where the capital is invested in stocks or bonds of the United States.<sup>9</sup> Where franchises are taxed and not property, the capital stock may be taxed, although it consists of United States securities.<sup>10</sup> States cannot tax treasury notes used as currency without per-

mission of Congress,<sup>11</sup> nor money lent and stocks or bonds received therefor.<sup>12</sup> States cannot tax national banks nor their notes,<sup>13</sup> but Congress may permit States to tax national banks.<sup>14</sup> States may tax the shares held by individuals in a national bank,<sup>15</sup> although its capital may be invested in bonds of the United States,<sup>16</sup> but not except by permission of Congress,<sup>17</sup> nor when shares in State banks are exempt.<sup>18</sup> States may tax the dividends declared to holders of stock of national banks,<sup>19</sup> or the percentage of the deposits of a bank.<sup>20</sup> Congress may subject the shares of corporation stock of national banks to State taxation, notwithstanding the capital is invested in national securities,<sup>21</sup> on the condition that it tax the shares of banks of its own creation.<sup>22</sup>

1 Bank of Commerce v. New York, 2 Black, 629; Bank Tax Cases, 2 Wall. 200; Van Allen v. Assessors, 3 Wall. 573; People v. Commissioners, 4 Wall. 244; 7 Wall. 26; Bradley v. People, 4 Dall. 459; Hamilton Comp. v. U. S., 6 Wall. 639; Metropolitan Bank v. Van Dyck, 27 N. Y. 400; Society for Savings v. Colte, 6 Wall. 604; Austin v. The Aldermen, 7 Wall. 699; Weston v. Charleston, 2 Pet. 449.

2 Weston v. Charleston, 2 Pet. 449; Harp. 340; Bank v. Commissioners, 2 Black. 620; Opinion of Justices, 53 N. H. 634. *Contra*, People v. Commissioners, 26 N. Y. 163; 37 Barb. 635.

3 Banks v. Mayor, 7 Wall. 23; Banks v. Supervisors, 7 Wall. 26; State v. Haight, 30 N. J. 428. *Contra*, People v. Gardner, 48 Barb. 608.

4 Chicago v. Lunt, 52 Ill. 414; Bank v. Commissioners, 2 Black, 620; Newark City Bank v. Assessor, 30 N. J. 13.

5 Bank of Ky. v. Comm., 9 Bush, 46; Opinion of Justices, 53 N. H. 634.

6 Railroad Co. v. Jackson, 7 Wall. 262; Railroad Co. v. Pennsylvania, 15 Wall. 300; State Tax on For. Held Bonds, 15 Wall. 325. *Contra*, Maltby v. Reading & c. R. R. Co., 52 Pa. St. 140; Susquehanna & c. Can Co. v. Comm., 72 Pa. St. 72; Delaware R. R. Co. v. Comm., 66 Pa. St. 64; Pittsburgh & c. R. R. Co. v. Comm., 66 Pa. St. 73; 3 Brewst. 355.

7 People v. Commissioners, 4 Wall. 259; Van Allen v. Assessors, 3 Wall. 573; Thompson v. Pac. R. R. Co., 9 Wall. 579; Tappan v. Merch. Bank, 19 Wall. 501; Bureau Co. v. Chicago & c. R. R., 44 Ill. 229; Railroad Co. v. Peniston, 18 Wall. 5; National Bank v. Commissioners, 9 Wall. 353; Worthington v. Sebastian, 25 Ohio St. 1; Great Barrington v. Berkshire, 33 Mass. 572; McKen v. Northampton, 49 Pa. St. 519.

8 Strode v. Commonwealth, 52 Pa. St. 181.

9 Bank v. Commissioners, 2 Black, 620; Whitney v. Madison, 23 Ind. 331; Interna. Assu. Co. v. Commissioners, 23 Barb. 318; Mech. Bank v. Bridges, 30 N. J. 112; St. Louis B. & S. Asso. v. Lightner, 42 Mo. 421.

10 Society of Sav. v. Colte, 6 Wall. 594; Provident Inst. v. Massachusetts, 6 Wall. 611; Hamilton Comp. v. Massachusetts, 6 Wall. 632.

11 Bank v. Supervisors, 7 Wall. 26; Montgomery Co. v. Elston, 32 Ind. 27; Horne v. Green, 52 Miss. 452.

12 Weston v. Charleston, 2 Pet. 449; Bank of Commerce v. New York, 2 Black, 620; Bank Tax Cases, 2 Wall. 200.

13 McCulloch v. Maryland, 4 Wheat. 316; Osborn v. Bank of U. S., 9 Wheat. 738; Bank of Commerce v. New York, 2 Black, 620; Bank Tax

Cases, 2 Wall. 200; *Pittsburgh v. National Bank*, 55 Pa. St. 45; *Collins v. Chicago*, 4 Biss. 472.

14 *Van Allen v. Assessors*, 3 Wall. 573; 33 N. Y. 161; *State v. Haight*, 31 N. J. 399; *Frazer v. Selbern*, 16 Ohio St. 614; *Mintzer v. Montgomery*, 54 Pa. St. 130; *Austin v. Boston*, 96 Mass. 359; *City v. Churchill*, 43 Barb. 650; *People v. Barton*, 44 Barb. 148; *People v. Commissioners*, 4 Wall. 244; 35 N. Y. 423; *National Bank v. Commonwealth*, 9 Wall. 353; *First National Bank v. Douglass Co.*, 3 Dill. 238, 330; *Wright v. Stilz*, 27 Ind. 333; *Hubbard v. Supervisors*, 23 Iowa, 130.

15 *National Bank v. Comm.*, 9 Wall. 353; *People v. Bradley*, 39 Ill. 120; *St. Louis Na. Bank v. Papin*, 4 Dill. 27; *Bulow v. Charleston*, 1 Nott & McC. 45; *Stetson v. Bangor*, 56 Me. 274; *State v. Haight*, 31 N. J. 399; *State v. Hart*, 31 N. J. 434.

16 *People v. Commissioners*, 4 Wall. 259; *Wright v. Stilz*, 27 Ind. 233; *St. Louis B. & S. Asso. v. Lightner*, 47 Mo. 421. *Contra*, *Whitney v. Madison*, 23 Ind. 331.

17 *People v. Assessors*, 44 Barb. 148.

18 *Bradley v. People*, 4 Wall. 459; *National Bank v. Comm.* 9 Wall. 353.

19 *State v. Collector*, 2 Bailey, 654.

20 *Society of Sav. v. Colto*, 6 Wall. 594.

21 *McCulloch v. Maryland*, 4 Wheat. 316; *Weston v. Charleston*, 2 Pet. 449; *Collector v. Day*, 11 Wall. 123; *Ward v. Maryland*, 12 Wall. 427; *Van Allen v. Assessors*, 3 Wall. 593.

22 *Lionberger v. Rouse*, 9 Wall. 408.

<sup>3</sup> *To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.*

**Commerce.**—Commerce is a unit, every part of which is indicated by the term.<sup>1</sup> It refers to trade<sup>2</sup> or traffic, and exchange of commodities.<sup>3</sup> It is more, it is intercourse,<sup>4</sup> and includes the buying and selling of exchange.<sup>5</sup> It is not limited to the mere buying and selling, but comprehends entire commercial intercourse,<sup>6</sup> for the purposes of trade,<sup>7</sup> whether by land or water,<sup>8</sup> and includes communication by telegraph.<sup>9</sup> Transportation is essential to commerce;<sup>10</sup> the transportation of articles of trade from one State to another;<sup>11</sup> the transportation for gain or purchase, or exchange of commodities,<sup>12</sup> or of passengers,<sup>13</sup> on railroads through the several States, or between the States,<sup>14</sup> and is co-extensive with the subject to which it relates.<sup>15</sup> It includes navigation as well as traffic,<sup>16</sup> navigation being only one of its elements,<sup>17</sup> and comprises the control of all navigable waters accessible from a State other than that in which they lie,<sup>18</sup> and obstacles or burdens laid on it are regulations of commerce,<sup>19</sup> and State statutes imposing the same on interstate commerce are in conflict.<sup>20</sup> A tax on freight taken out of or brought into a State is invalid.<sup>21</sup> So, a State law laying a distinct tax on a foreign corporation for transportation of goods in trains from State to State is unconstitutional.<sup>22</sup>

- 1 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150, 175; *Lin Sing v. Washburn*, 20 Cal. 534.
- 2 *U. S. v. Bailey*, 1 McLean, 234.
- 3 *The Daniel Ball*, 10 Wall. 557; 1 Brown, 193.
- 4 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150; *Groves v. Slaughter*, 15 Peters, 449; *Brown v. Maryland*, 12 Wheat. 419; *U. S. v. Holliday*, 3 Wall. 417; *Mitchell v. Steelman*, 8 Cal. 363; *People v. Brooks*, 4 Denio, 469; *N. R. Steamboat Co. v. Livingston*, 3 Cowen, 713; *Moor v. Veazie*, 32 Mo. 343; *Corfield v. Coryell*, 4 Wash. C. C. 371.
- 5 *U. S. v. Holliday*, 3 Wall. 417.
- 6 *People v. Brooks*, 4 Denio, 469; *State v. Delaware &c. R. R. Co.* 20 N. J. 473.
- 7 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488.
- 8 *State Freight Tax Cas.* 15 Wall. 275; *Clinton Bridge Case*, 10 Wall. 454; 1 Woolw. 150; 16 Am. Law Reg. N. S. 149.
- 9 *West. U. Tel. Co. v. Atlantic & P. T. Co.* 5 Nev. 102; *Pensacola Tel. Co. v. W. U. T. Co.* 2 Woods, 643.
- 10 *State Freight Tax Cas.* 15 Wall. 275; *Ward v. Maryland*, 12 Wall. 418; *Welton v. Mo.* 91 U. S. 275; *Henderson v. Mayor &c.* 92 U. S. 259; *Railroad Co. v. Husen*, 95 U. S. 473.
- 11 *State Freight Tax Cas.* 15 Wall. 275.
- 12 *State Freight Tax Cas.* 15 Wall. 275; *Welton v. State*, 91 U. S. 275; 55 Mo. 288; *Passenger Cases*, 7 How. 282.
- 13 *People v. Raymond*, 34 Cal. 492.
- 14 *Piek v. Chicago &c. R. R. Co.* 6 Biss. 182; *State Freight Tax Cas.* 15 Wall. 232.
- 15 *Lin Sing v. Washburn*, 20 Cal. 534.
- 16 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150, 175; *U. S. v. Coombs*, 12 Peters, 72; *Cooley v. Portwardens*, 12 How. 319; *N. R. Steamboat Co. v. Livingston*, 3 Cowen, 713; *Passenger Cases*, 7 How. 282; 45 Mass. 282; *The Wilson v. U. S.* 1 Brock. 423; *People v. Brooks*, 4 Denio, 469; *Chapman v. Miller*, 2 Spears, 769; *South Carolina v. Georgia*, 93 U. S. 4.
- 17 *Clinton Bridge Case*, 10 Wall. 454; *Woolw.* 150; 16 Am. Law Reg. N. S. 149.
- 18 *The Thomas Swan*, 6 Ben. 45. But not to waters not navigable streams—*Groton v. Huriburt*, 22 Conn. 183.
- 19 *State Freight Tax Cas.* 15 Wall. 232; *Ward v. Md.* 12 Wall. 418, *Welton v. Mo.* 91 U. S. 275; *Henderson v. N. Y.* 92 U. S. 259; *Chy Lung v. Freeman*, *Ibid.* 275; *Railroad Co. v. Husen*, 95 U. S. 470.
- 20 *Hall v. DeCulr*, 95 U. S. 488; *Welton v. Missouri*, 91 U. S. 282; *Council Bluffs v. Kansas &c. R. R. Co.* 45 Iowa, 338.
- 21 *State Freight Tax Cases*, 15 Wall. 232.
- 22 *Erie R. R. Co. v. New Jersey*, 2 Vroom, 531.

**Power of Congress to regulate.**—To regulate means to establish rules by which it is to be governed: <sup>1</sup> to regulate the external commerce of the nation, as well as that among the several States; <sup>2</sup> the object of the provision being to get rid of conflicting commercial interests, and to effect a union of all the people into one nation. <sup>3</sup> “With foreign nations” means with citizens and subjects of for-

sign governments,<sup>4</sup> and includes all the means by which it may be carried on, whether by free navigation of waters of the several States, or by land across them;<sup>5</sup> and "among" may be restricted to that commerce which concerns more than one State.<sup>6</sup> The power is complete in itself, with no limit other than that prescribed,<sup>7</sup> and may operate on any and every subject of commerce to which the legislative discretion may extend, and embraces manufactures, bullion, coin, or any other thing.<sup>8</sup> It authorizes all appropriate legislation as will secure convenient and safe navigation of all the waters of the United States, whether requiring the removal of obstructions, or subjecting vessels to inspection laws.<sup>9</sup> It may change the channel or outlet of a bay, or may otherwise improve navigation.<sup>10</sup> The degree and extent of the prohibitions can only be adjusted by the discretion of the National Government.<sup>11</sup> It comprehends the control of all navigable waters accessible from outside the State,<sup>12</sup> with authority to order their improvement,<sup>13</sup> and prevent obstructions on the navigable waters between the States,<sup>14</sup> as in the erection of bridges.<sup>15</sup> It may prevent the obstruction of any navigable stream which is a means of commerce between any two or more States,<sup>16</sup> and keep open navigable rivers.<sup>17</sup> The jurisdiction of the General Government extends so far as is necessary for commercial purposes.<sup>18</sup> A law authorizing the building of a bridge is a regulation of commerce, and within the power conferred on Congress.<sup>19</sup> A State cannot authorize a material obstruction in a channel of a navigable tributary of the Mississippi.<sup>20</sup> A State may improve navigation, and charge a reasonable toll for such purpose, in the absence of Congressional legislation,<sup>21</sup> because it is within the reserved police powers of the State;<sup>22</sup> but the police powers of a State cannot obstruct foreign commerce, or interstate commerce,<sup>23</sup> and that which cannot be done directly cannot be done indirectly.<sup>24</sup> The navigable waters of the United States and of the State distinguished.<sup>25</sup> It is within the police power of a State to authorize the channel of a river to be turned and straightened to protect from inundation.<sup>26</sup> A stream is not navigable unless so for some general and useful purpose.<sup>27</sup> See Supplement, *post*, 292.

1 Gibbons v. Ogden, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150, 175.

2 Brown v. Maryland, 12 Wheat. 419; People v. Huntington, 4 N. Y. Leg. Obs. 187; Passenger Cases, 7 How. 282.

3 Metropolitan Bank v. Van Dyck, 27 N. Y. 508.

4 U. S. v. Holliday, 3 Wall. 417; Flannagan v. Philadelphia, 22 Pa. 219.

5 Pennsylvania v. Wheeling &c. Bridge, 18 How. 421; Columbus Ins. Co. v. Peoria Br. 6 McLean, 70; Col. Ins. Co. v. Curlenius, Ibid. 209;

*Jolly v. Terre Haute D. Co.* 6 McLean, 237; *U. S. v. R. R. Br. Co.* *Ibid.* 318; *Corfield v. Coryell*, 4 Wash. U. C. 388; *Cook v. Pennsylvania*, 6 Am. Law Reg. 378.

6 *Veazle v. Moor*, 14 How. 569; *Passaic Bridges*, 3 Wall. 782; *The Daniel Ball*, 10 Wall. 557; 1 Brown, 193; *U. S. v. Dewitt*, 9 Wall. 45.

7 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 438; *Pollard v. Hagan*, 3 How. 239; *Passenger Cases*, 7 How. 396; *State v. Kennedy*, 19 La. An. 397.

8 *U. S. v. Marigold*, 9 How. 560.

9 *The Daniel Ball*, 10 Wall. 557; 1 Brown, 193.

10 *Wisconsin v. Duluth*, 6 Am. Law Reg. 58; *South Carolina v. Georgia*, 93 U. S. 4.

11 *U. S. v. The William*, 2 Am. L. J. 255.

12 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 438; *Corfield v. Coryell*, 4 Wash. C. C. 371; *Gilman v. Philadelphia*, 3 Wall. 713.

13 *South Carolina v. Georgia*, 93 U. S. 4.

14 *Works v. Junction R. R.* 5 McLean, 426; *Railroad Co. v. Richmond*, 19 Wall. 584.

15 *Pennsylvania v. Wheeling &c. Co.* 18 How. 423.

16 *Works v. Junction R. R. Co.* 5 McLean, 426; *Jolly v. Terre Haute Co.* 6 *Ibid.* 237; *Devoe v. Penrose F. B. Co.* 3 Am. L. J. 79.

17 *U. S. v. New Bedford Br. Co.* 1 Wood. & M. 401.

18 *Jolly v. Terre Haute Co.* 6 McLean, 241; *Palmer v. Cuyahoga Co.* 3 McLean, 226; *Spooner v. McConnell*, 1 McLean, 337; *Hogg v. Zanesville Co.* 5 Ohio St. 416.

19 *Clinton Bridge Case*, Woolw. 150.

20 *Columbus Ins. Co. v. Curtin*, 6 McLean, 219.

21 *Wisconsin Riv. Imp. Co. v. Manson*, 43 Wis. 255; *Thames Bank v. Lovell*, 18 Conn. 511; *Kellogg v. Union Co.* 12 Conn. 26; *McReynolds v. Smallhouse*, 8 Bush, 447.

22 *Willson v. Blackbird Co.* 2 Peters, 245; *Gilman v. Philadelphia*, 3 Wall. 743.

23 *Railroad Co. v. Huzen*, 95 U. S. 473, disapproving *Yeazel v. Alexander*, 58 Ill. 254.

24 *Wayman v. Southard*, 10 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419; *Missouri v. North*, 27 Mo. 479.

25 *The Montello*, 11 Wall. 411.

26 *Green v. Swift*, 47 Cal. 536.

27 *Groton v. Hurlurt*, 22 Conn. 186.

**What it embraces.**—It embraces all instruments by which commerce may be carried on,<sup>1</sup> and all the immediate vehicles and agents, for all purposes<sup>2</sup>—vessels, as well as the articles they bring,<sup>3</sup> and the persons who conduct it;<sup>4</sup> and includes the power to prescribe rules for the shipping of seamen,<sup>5</sup> and for the regulation of seamen in the merchant service,<sup>6</sup> or to regulate contracts, or extinguish liens, and the shipping of seamen or navigation of foreign vessels,<sup>7</sup> or to the regulation and qualification of pilots<sup>8</sup>—but the passage of acts regulating pilots does not release pilots from a penalty incurred under a State law.<sup>9</sup>

It includes the power to pass a recording act for the security and protection of persons dealing in vessels.<sup>10</sup> It extends to persons as well as to property;<sup>11</sup> to the regulation of vessels carrying passengers, whether steam or other vessel;<sup>12</sup> to the passage of laws to encourage immigration, or for the admission of citizens and subjects of foreign nations;<sup>13</sup> but it confers no power to declare the status of persons—the power ceases when they arrive.<sup>14</sup> It includes the power to prohibit immigration or the importation of persons,<sup>15</sup> or the importation of slaves,<sup>16</sup> or to punish persons who hold or sell slaves imported.<sup>17</sup> It includes commerce carried on by corporations as well as individuals,<sup>18</sup> and the power to impose embargoes<sup>19</sup> and to punish for crimes on stranded vessels.<sup>20</sup> The power to regulate commerce includes all the means necessary to the execution of such power, as the power to build and maintain light-houses, piers, breakwaters, to employ revenue cutters, cause survey of coasts, rivers, and harbors, to appoint all necessary officers at home and abroad, and prescribe their duties and fix terms of office and compensation, and to define and punish crimes relative to commerce.<sup>21</sup> See Supplement, *post*, 292.

1 *Welton v. State*, 91 U. S. 275; 55 Mo. 288.

2 *Mitchell v. Steelman*, 8 Cal. 363.

3 *The Wilson v. U. S.* 1 Brock. 423.

4 *Cooley v. Port Wardens*, 12 How. 299.

5 *The Barque Chusan*, 2 Story, 455.

6 *Ex parte Pool*, 2 Va. Cas. 276.

7 *The Barque Chusan*, 2 Story, 455.

8 *Cooley v. Port Wardens*, 12 How. 299; *Cisco v. Roberts*, 6 Bosw. 494; *Dryden v. Commonwealth*, 16 B. Mon. 578; *Edwards v. Panama*, 1 Or. 418.

9 *Sturgis v. Spofford*, 45 N. Y. 446.

10 *White's Bank v. Smith*, 7 Wall. 646; *Blanchard v. The Martha Washington*, 1 Cliff. 463; *Foster v. Chamberlain*, 41 Ala. 156; *Mitchell v. Steelman*, 8 Cal. 363; *Shaw v. McCandless*, 36 Miss. 296.

11 *Lin Sing v. Washburn*, 20 Cal. 534.

12 *Gibbons v. Ogden*, 9 Wheat. 1; *Passenger Cases*, 7 How. 282; 45 Mass.; *People v. Raymond*, 34 Cal.; *Murphy v. North T. Co.*, 15 Ohio St.

13 *Lin Sing v. Washburn*, 20 Cal. 534.

14 *Lemmon v. People*, 20 N. Y. 607; 26 Barb. 270.

15 *Gibbons v. Ogden*, 9 Wheat. 1; *The Wilson v. U. S.*, 1 Brock. 423; *Passenger Cases*, 7 How. 282; *People v. Downer*, 7 Cal. 167.

16 *U. S. v. Gould*, 8 Am. L. Reg. 525; *U. S. v. Haun*, Id. 663.

17 *U. S. v. Gould*, 8 Am. L. Reg. 525; *U. S. v. Haun*, Id. 663.

18 *Paul v. Virginia*, 8 Wall. 168.

19 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150, 175; *U. S. v. The William*, 2 Hall's L. J. 272.

20 U. S. v. Coombs, 12 Pet. 72.

21 U. S. v. Coombs, 12 Pet. 72; U. S. v. Holliday, 3 Wall. 407; U. S. v. Rhodes, 1 Abb. U. S. 50.

**Exclusiveness of powers of Congress.**—The mere grant of commercial power does not forbid the States from passing laws to regulate commerce—States have a concurrent power on this subject.<sup>1</sup> Where the regulation of commerce requires a uniform rule, the power of Congress is exclusive; but where it requires rules in different localities, the States may legislate, in the absence of congressional legislation,<sup>2</sup> as in case of the erection of bridges,<sup>3</sup> or dams across navigable streams,<sup>4</sup> or pilot regulations,<sup>5</sup> or the regulation of fares and freights.<sup>6</sup> It is for Congress to determine when its full power shall be brought into activity,<sup>7</sup> and when it legislates the States are absolutely prohibited from interfering.<sup>8</sup> Where the subject is national and admits of only one plan of regulation, the power of Congress is exclusive,<sup>9</sup> and no part can be exercised by the States,<sup>10</sup> as in the regulation of foreign commerce and commerce among the States;<sup>11</sup> in such cases the States cannot interfere by additional or auxiliary legislation.<sup>12</sup> The design and object of this grant of power was to establish uniformity among the several States, and prevent unjust and invidious distinctions.<sup>13</sup> A State statute in conflict with a congressional regulation of commerce is unconstitutional.<sup>14</sup> When a statute invades the domain of legislation belonging exclusively to Congress, it is void.<sup>15</sup> The commercial power is not so exclusive as to prevent States from enacting laws necessary to internal police.<sup>16</sup>

1 Cooley v. Port Wardens, 12 How. 319; People v. Coleman, 4 Cal. 46.

2 Cooley v. Port Wardens, 12 How. 299; Gilman v. Philadelphia, 3 Wall. 713; Ex parte McNeill, 13 Wall. 240; Pound v. Turck, 95 U. S. 462; Mitchell v. Steelman, 8 Cal. 363; Crandall v. Nevada, 6 Wall. 35; People v. C. P. R. R. Co., 43 Cal. 404.

3 Gilman v. Philadelphia, 3 Wall. 713; Clark v. Sohler, 1 Wood. & M. 373; U. S. v. Ames, 1 Wood. & M. 76; U. S. v. New Bedford Bridge, 1 Wood. & M. 503.

4 Willson v. Blackbird Br. Co., 2 Pet. 245; Pound v. Turck, 95 U. S. 463.

5 Cooley v. Port Wardens, 12 How. 299.

6 Plek v. Chicago &c. R. R. Co., 94 U. S. 178; Winona &c. R. R. Co. v. Blake, 94 U. S. 180.

7 U. S. v. New Bedford Bridge, 1 Wood. & M. 421; U. S. v. Coombs, 12 Pet. 72; N. Y. v. Miln, 11 Pet. 155; Gilman v. Philadelphia, 3 Wall. 713.

8 Gibbons v. Ogden, 9 Wheat. 219; Brown v. Maryland, 12 Wheat 419; Passenger Cases, 7 How. 283.

9 Cooley v. Port Wardens, 12 How. 299.



10 *Gibbons v. Ogden*, 9 Wheat. 1; *Groves v. Slaughter*, 15 Pet. 504; *Passenger Cases*, 7 How. 283.

11 *Sherlock v. Alling*, 93 U. S. 99; *Hall v. De Cuir*, 65 Id. 498; *Railroad Co. v. Husen*, 95 U. S. 465; *N. R. S. Co. v. Livingston*, 3 Cow. 713; *People v. Brooks*, 4 Den. 460; *Council Bluffs &c. R. R. Co.*, 45 Iowa, 338.

12 *The Chusan*, 2 Story, 455; *Sinnot v. Davenport*, 22 How. 227.

13 *Veazie v. Moor*, 14 How. 563; *Welton v. State*, 91 U. S. 275.

14 *Sinnot v. Davenport*, 22 How. 227; *Blanchard v. The Martha Washington*, 1 Cliff. 473; *Ex parte Ah Fong*, 3 Sawy. 145.

15 *Henderson v. The Mayor*, 92 U. S. 259.

16 *Comrs. of Pilotage v. The Cuba*, 28 Ala. 106.

**Passengers.**—A State cannot impose on shipmasters burdensome conditions to the landing of passengers,<sup>1</sup> nor can it enforce laws regulating the arrival of passengers from a foreign port.<sup>2</sup> A State law imposing a tax on passengers arriving from a foreign port is unconstitutional and void.<sup>3</sup> So, a State law to discourage Chinese immigration is in violation of this provision.<sup>4</sup> So, a State law authorizing the seizure and imprisonment of free negroes brought to the State from abroad, is void.<sup>5</sup> So, a tax on passengers or goods passing through a State is invalid.<sup>6</sup> A tax on passengers leaving a State, though not in conflict with this provision, is nevertheless void, as it is inconsistent with the objects for which the Federal Government was established, and the rights conferred on the Government and the people.<sup>7</sup> The extent of the power of a State to exclude a foreigner is limited to its police powers. Whatever is beyond the right of self-defense is exclusively within the jurisdiction of the General Government.<sup>8</sup>

1 *Henderson v. Mayor &c. of N. Y.* 92 U. S. 259.

2 *Chy Lung v. Freeman*, 92 U. S. 275.

3 *Passenger Cases*, 7 How. 349; *People v. Raymond*, 34 Cal. 492; *State v. S. S. Constitution*, 42 Cal. 589.

4 *Lin Sing v. Washburn*, 20 Cal. 534.

5 *Elkison v. Dellesseline*, 2 Whart. Cr. Cas. 56; *Anonymous*, 1 Opin. Atty. Gen. 659. But see *Anonymous*, 2 Opin. Atty. Gen. 426.

6 *Passenger Cases*, 7 How. 283; *Crandall v. Nevada*, 6 Wall. 35. But see *Smith v. Marston*, 5 Tex. 432; *Indiana v. Am. Express Co.* 7 Biss. 227; *State Tax on R. Gross Receipts*, 15 Wall. 284; *Railroad Co. v. Maryland*, 21 Wall. 456; *Freight Tax Cases*, 15 Wall. 232.

7 *Crandall v. Nevada*, 6 Wall. 48.

8 *In re Ah Fong*, 3 Sawy. 145; *Passenger Cases*, 7 How. 349.

**Police powers of States.**—Private interests must be made subservient to the general interest of the community,<sup>1</sup> so the power of States over police regulations is supreme.<sup>2</sup> A State law intended as a regulation of police is not a regulation of commerce,<sup>3</sup> but the police power cannot be extended over interstate transportation of the subjects of commerce.<sup>4</sup> A State may regulate the position of vessels in her harbors or rivers,<sup>5</sup> or may regulate the speed of steamers or railroad trains.<sup>6</sup> States may prohibit the introduction of slaves,<sup>7</sup> or exclude paupers, criminals, diseased or infirm persons, and persons afflicted with contagious diseases,<sup>8</sup> and may exact a bond to indemnify from expense of maintaining passengers after arrival;<sup>9</sup> but to exclude passengers who are in possession of their faculties, and neither paupers nor criminals, is a regulation of commerce which the State cannot exercise.<sup>10</sup> So, a State cannot legislate to prevent the importation of cattle during certain seasons of the year, this being more than an exercise of its police powers;<sup>11</sup> but it may regulate the introduction of game during certain months;<sup>12</sup> but forbidding the exportation of game, lawfully killed within the State, is unconstitutional.<sup>13</sup> A State may forbid the sale of an illuminating liquid below a certain standard,<sup>14</sup> or regulate the use of explosives and dangerous oils and substances,<sup>15</sup> or may remove the same.<sup>16</sup> The police power extends to the protection of the lives, limbs, health, comfort, morals, and quiet of all persons, and the protection of all property in the State.<sup>17</sup> This clause does not interfere with the rights of States to enact inspection, quarantine, and health laws, as well as laws regulating internal commerce,<sup>18</sup> or commerce local in its character,<sup>19</sup> as requiring the master of a vessel to report the names, ages, and origin of passengers.<sup>20</sup> Inspection laws are not burdens on trade, nor unjust discriminations, so long as they are reasonable;<sup>21</sup> but a statute requiring vessels to furnish statements of the name and owner is void as to United States vessels.<sup>22</sup> So, a statute relating to the survey of sea-going vessels is a regulation of commerce, and void.<sup>23</sup>

1 *Slaughter House Cases*, 16 Wall. 62; *Commonwealth v. Alger*, 7 Cush. 84; *Taunton v. Taylor*, 116 Mass. 254; *Watertown v. Mayo*, 109 Mass. 315.

2 *Slaughter House Cases*, 16 Wall. 62; *Bartemeyer v. Iowa*, 18 Wall. 133.

3 *Smith v. Maryland*, 18 How. 71; *New York v. Miln*, 11 Peters, 102.

4 *Railroad Co. v. Husen*, 95 U. S. 465. *Contra*, *Yeazel v. Alexander*, 58 Ill. 254.

5 *Vanderbilt v. Adams*, 7 Cow. 348.

- 6 *People v. Jenkins*, 1 Hill, 469; *Toledo &c. Co. v. Deacon*, 63 Ill. 91.
- 7 *Groves v. Slaughter*, 15 Peters, 449; *Osborn v. Nicholson*, 1 Dill. 235.
- 8 *Passenger Cases*, 7 How. 283; *Moore v. Illinois*, 14 How. 13; *State v. S. S. Constitution*, 42 Cal. 578; *Lemmon v. People*, 20 N. Y. 607; 26 Barb. 270.
- 9 *Candler v. Mayor of New York*, 1 Wend. 493; *State v. S. S. Constitution*, 42 Cal. 578; *Henderson v. The Mayor*, 92 U. S. 265; *Passenger Cases*, 7 How. 572. But see *New York v. Staples*, 6 Cow. 170.
- 10 *State v. S. S. Constitution*, 42 Cal. 578.
- 11 *Railroad Co. v. Husen*, 95 U. S. 465; S. C. 6 Am. L. R. 265, denying *Yeazel v. Alexander*, 59 Ill. 254; *Stevens v. Brown*, *ibid.* 289; *Wilson v. Kansas C. St. J. & C. R. R.* 60 Mo. 184; *Husen v. Hannibal & St. J. R. R. Co.* 60 Mo. 226; *Mercer v. Kansas C. St. J. & C. R. R. Co.* 60 Mo. 37; *Chicago &c. R. R. Co. v. Gassaway*, 71 Ill. 570; *Somerville v. Marks*, 53 Ill. 371.
- 12 *State v. Randolph*, 1 Mo. App. 15.
- 13 *State v. Saunders*, 19 Kans. 127.
- 14 *Patterson v. Kentucky*, 11 Chic. L. N. 183; 7 Am. L. R. 83.
- 15 *Slaughter House Cases*, 16 Wall. 36; *U. S. v. Dewitt*, 9 Wall. 41.
- 16 *Holmes v. Jennison*, 14 Peters, 540.
- 17 *Munn v. Illinois*, 94 U. S. 147; *Toledo &c. Co. v. Jacksonville*, 67 Ill. 37; *Ex parte Shrader*, 33 Cal. 279; *Davis v. Central R. R. Co.* 17 Ga. 323.
- 18 *Gibbons v. Ogden*, 9 Wheat. 1; *New York v. Miln*, 11 Peters, 102; *Conway v. Taylor*, 1 Black, 633; *State v. Fosdick*, 21 La. An. 256.
- 19 *State v. S. S. Constitution*, 42 Cal. 578.
- 20 *New York v. Miln*, 11 Peters, 131.
- 21 *People v. Harper*, 11 Chic. L. N. 191.
- 22 *Sinnot v. Davenport*, 22 How. 227; *Foster v. Davenport*, 22 How. 244. *Contra*, *Comms. of Pilotage v. The Cuba*, 28 Ala. 185.
- 23 *Foster v. Master &c. of N. O.* 94 U. S. 246. Supplement, *post*, 298.

**Internal commerce of State.**—A State may regulate its own internal commerce;<sup>1</sup> it may grant exclusive privilege of navigating an unnavigable stream wholly within the State, on condition of rendering it navigable.<sup>2</sup> States may legislate as to roads, ferries, canals, etc., when they do not interfere with the free navigation of the waters of the State, for purposes of interstate commerce;<sup>3</sup> but they cannot pass laws imposing a toll on logs and lumber floating down a stream running into another State.<sup>4</sup> They may regulate the person and thing within their own jurisdiction, notwithstanding the regulation may have a bearing on commerce,<sup>5</sup> as the erection of wharves, which are subservient of commerce.<sup>6</sup> They may prescribe regulations for warehouses,<sup>7</sup> and fix rates of charges for storing, handling, and shipping goods,<sup>8</sup> or pass laws for the regulation of pilots, in the absence of congressional acts on that subject.<sup>9</sup> They may issue charters to bridge, turnpike, and canal companies,<sup>10</sup> and may grant exclusive rights.<sup>11</sup> Bridges are in the same cate-

gory with ferries, and are within the State power under her inspection laws,<sup>12</sup> and although they cannot authorize obstructions to navigable waters,<sup>13</sup> in the absence of legislative restrictions, they may bridge an internal navigable river.<sup>14</sup> The abridgment of a right, unless in conflict with the Constitution or laws of the United States, is an affair between the Government and the State.<sup>15</sup> States may authorize the construction of a drawbridge across navigable streams.<sup>16</sup> The power of Congress to authorize a bridge across a public river navigable from the sea is paramount.<sup>17</sup> Not everything which affects commerce amounts to a regulation of it;<sup>18</sup> so a State may require railroads to fix and post up the rates of freight,<sup>19</sup> or may fix a maximum rate of charges for transportation,<sup>20</sup> or may levy a tax on the gross receipts,<sup>21</sup> or may impose conditions in the charter requiring a bonus or portion of the earnings to be paid to the State.<sup>22</sup> A State law which prescribes the rates for different classes of railroads is not in conflict.<sup>23</sup> A corporation is amenable to the police powers of the State,<sup>24</sup> and this includes railroad corporations.<sup>25</sup> It may require roads to be fenced,<sup>26</sup> may supervise tracks and switches, time trains, regulate rails, the safety of beams, number of employees, regulate speed, etc.;<sup>27</sup> or may impose penalties on conductors, and require stoppage at way stations.<sup>28</sup> See Supplement, *post*, 295.

1 *Wilson v. Kansas C. St. J. & C. B. R. R. Co.* 60 Mo. 184; *Pennsylvania v. Wheeling & B. Br. Co.*, 18 How. 432; *The Daniel Ball*, 10 Wall. 557; 1 Brown, 196; *The Montello*, 11 Wall. 411; *Peik v. Chicago &c.* 94 U. S. 164; *Pensacola T. Co. v. Western U. T. Co.* 96 U. S. 1; U. S. v. *New Bedford Bridge*, 1 Wood & M. 410; *People v. Platt*, 17 Johns. 185; *Scott v. Willson*, 3 N. H. 321; *Canal Comms. v. People*, 5 Wend. 448; *People v. Rensselaer & S. R. R. Co.* 15 Wend. 113.

2 *Veazie v. Moor*, 14 How. 568.

3 *Corfield v. Coryell*, 4 Wash. C. C. 371; *U. S. v. New Bedford Bridge*, 1 Wood. & M. 417.

4 *Carson River L. Co. v. Patterson*, 33 Cal. 334.

5 *Passenger Cases*, 7 How. 548; *Sherlock v. Alling*, 93 U. S. 99; *St. Louis v. McCoy*, 18 Mo. 233; *Lewis v. Boffinger*, 12 Mo. 13; *Wilson v. Kansas C. St. J. & C. B. R. R.* 60 Mo. 198; *Williams v. Bk. of Michigan*, 7 Wend. 539.

6 *Stevens v. Walker*, 15 La. Ann. 577; *The Ann Ryan*, 7 Ben. 23.

7 *Munn v. Illinois*, 94 U. S. 113; *Chicago &c. v. Iowa*, 94 U. S. 155.

8 *Munn v. Illinois*, 69 Ill. 80; affirmed, 94 U. S. 113; *Chicago &c. v. Illinois*, *Ibid.* 155.

9 *Cooley v. Port Wardens*, 12 How. 299; *Gilman v. Philadelphia*, 3 Wall. 713; *Master v. Ward*, 14 La. An. 289; *Master v. Morgan*, *Ibid.* 595.

10 *Fletcher v. Peck*, 6 Cranch, 87; *Piscataqua Br. v. New Haven Bridge*, 7 N. H. 35.

11 *Gibbons v. Ogden*, 9 Wheat. 19; *People v. Babcock*, 11 Wend. 586; *North River S. B. Co. v. Livingston*, 3 Cow. 733.

- 12 *Gilman v. Philadelphia*, 3 Wall. 726; *People v. Rensselaer & S. R. R. Co.* 15 Wend. 113.
- 13 *Pennsylvania v. Wheeling Bridge Co.* 13 How. 518.
- 14 *Willson v. Blackbird C. M. Co.* 2 Peters, 250; *Silliman v. Hudson River Br. Co.* 4 Blatchf. 411.
- 15 *Willson v. Blackbird &c. Co.* 2 Peters, 245; *Woodman v. Kilbourne Manuf. Co.* 1 Abb. U. S. 163.
- 16 *Gibbons v. Ogden*, 9 Wheat. 203; *Pennsylvania v. Wheeling &c. Bridge Co.* 13 How. 607; *Silliman v. Hudson River Br. Co.* 1 Black. 582; 4 Blatchf. 74, 395; *Albany Br. Co.* 2 Wall. 403; *Silliman v. T. W. T. B. Co.* 11 Blatchf. 288; *Palmer v. Comm'rs. of Cuyahoga Co.* 3 McLean, 226; *Pennsylvania v. Rensselaer & S. R. R. Co.* 15 Wend. 113.
- 17 *Silliman v. Hudson River Br. Co.* 4 Blatch. 83, 407; *N. R. Steamboat Co. v. Livingston*, 3 Cow. 713; *People v. Rensselaer &c. R. R. Co.* 15 Wend. 113.
- 18 *Del. R. R. Tax*, 18 Wall. 232; *South Carolina v. Charleston*, 4 Rich. 283; *State Tax on R. R. Gross Receipts*, 15 Wall. 284.
- 19 *Railroad Co. v. Fuller*, 17 Wall. 563; *State Tax on R. R. Gross Receipts*, 15 Wall. 284; *Munn v. Illinois*, 94 U. S. 135.
- 20 *Ruggles v. People*, 11 Chic. L. N. 204; *Ohio &c. R. R. Co. v. McClelland*, 25 Ill. 140; *Galena &c. Co. v. Loomis*, 13 Ill. 548; *Galena &c. Co. v. Dill*, 22 Ill. 204; *Chicago &c. Co. v. Iowa*, 94 U. S. 155; *Chicago &c. Co. v. Ackley*, *Ibid.* 179.
- 21 *Reading R. R. Co. v. Pa.* 15 Wall. 284; *State Tax on Gross Receipts*, 15 Wall. 284.
- 22 *Railroad Co. v. Maryland*, 21 Wall. 456.
- 23 *Chicago &c. R. R. Co. v. Attorney-General*, 9 West. Jur. 347.
- 24 *Ruggles v. People*, 11 Chic. L. N. 204; *Galena &c. R. R. Co. v. Loomis*, 13 Ill. 548; *Galena &c. R. R. Co. v. Dill*, 22 Ill. 204; *Ohio &c. R. R. Co. v. McClelland*, 25 Ill. 140.
- 25 *Chicago &c. R. R. Co. v. Iowa*, 94 U. S. 155; *Winona &c. R. R. Co. v. Blake*, *Ibid.* 180; *Davidson v. State*, 4 Tex. Ct. App. 545.
- 26 *Thorpe v. Rutland &c. R. R. Co.* 27 Vt. 140.
- 27 *Thorpe v. Rutland &c. R. R. Co.* 27 Vt. 140; *Hegeman v. Western R. R. Co.* 16 Barb. 353; *Chicago &c. Co. v. Reidy*, 63 Ill. 43; *Chicago &c. Co. v. Haggerty*, 67 Ill. 113.
- 28 *Davidson v. State*, 4 Tex. Ct. App. 545.

**State authority over fisheries.**—On the Revolution the people of each State became sovereign over the navigable waters and the lands under them within the limits of the State,<sup>1</sup> with the right of eminent domain over the same.<sup>2</sup> The title to the soil under tide-waters of newly acquired territory vests in the State after its admission into the Union.<sup>3</sup> States may regulate the planting and growth of oysters within their territorial limits,<sup>4</sup> and make laws regulating commerce in them, which will not be repugnant, although the vessel may be enrolled and licensed as a United States vessel.<sup>5</sup> The grant of power in this clause does not include the control over fisheries; a State may protect or regulate all fisheries within its borders.<sup>6</sup> The admission of new States gives them the same abso-

lute rights as other States, notwithstanding the title was originally in the United States.<sup>7</sup>

1 *Martin v. Waddell*, 16 Peters, 419; *Smith v. Maryland*, 18 How. 74; *Pollard v. Hagan*, 3 How. 212; *Mayor &c. v. Eslava*, 9 Port. 577; *Duval v. McLoskey*, 1 Ala. 708; *Kemp v. Thorp*, 3 Ala. 291; *Pollard v. Files*, 3 Ala. 47.

2 *Pollard v. Hagan*, 3 How. 212; *Martin v. Waddell*, 16 Peters, 367; *Russell v. Jersey Comp.* 15 How. 426.

3 *Weber v. Harbor Commrs.* 6 Chic. Leg. N. 408.

4 *Smith v. Maryland*, 18 How. 71; *McCready v. Virginia*, 94 U. S. 391.

5 *Smith v. Maryland*, 18 How. 74.

6 *Martin v. Waddell*, 16 Peters, 419; *U. S. v. Devans*, 3 Wheat. 337; *Passenger Cases*, 7 How. 556; *Bennett v. Boggs*, Bald. 76; *The Martha Anne*, Olcott, 22; *Smith v. Maryland*, 18 How. 71; *Dunham v. Lamphire*, 3 Conn. 263; *Russell v. Asso. of The Jersey Co.* 15 Ho. 426; *Weston v. Sampson*, 8 Cush. 347; *Peck v. Lockwood*, 5 Day, 22; *Arnold v. Mundy*, 1 Halst. 1; *Stuttsman v. State*, 57 Ind. 119; *Parker v. Cutler M. Corp.* 20 Me. 353; *Corfield v. Coryell*, 4 Wash. C. C. 371; *Fleet v. Hegeman*, 14 Wend. 42; *Commonwealth v. Weatherhead*, 110 Mass. 175; *State v. Hockett*, 29 Ind. 302; *Gentile v. State*, Ibid. 409.

7 *Woodman v. Kilbourne Manuf. Co.* 1 Abb. U. S. 164; *Pollard v. Hagan*, 3 How. 212; *Gibbons v. Ogden*, 9 Wheat. 1; *Pennsylvania v. Wheeling &c. Br.* 18 How. 421; *Gilman v. Philadelphia*, 3 Wall. 713.

**State taxation.**—States may impose a license tax on foreign corporations.<sup>1</sup> A statute controlling operations of foreign insurance companies is not a regulation of commerce;<sup>2</sup> so, an ordinance imposing a city tax is not a violation of the Constitution,<sup>3</sup> even though the business extends beyond the limits of the State;<sup>4</sup> so, a State law imposing a tax on brokers dealing in foreign exchange is not in conflict.<sup>5</sup> Giving a license by a municipal corporation is not a regulation of commerce.<sup>6</sup> State license acts are not unconstitutional.<sup>7</sup> A State may levy a tax on business and persons within its limits;<sup>8</sup> so it may tax railroad property and telegraph lines within its limits;<sup>9</sup> may tax professions, occupations, and trades;<sup>10</sup> may regulate and license the practice of law.<sup>11</sup> A tax by a State on its own corporations, or their property or franchises, is not in conflict,<sup>12</sup> although the capital be invested in shipping.<sup>13</sup> When Congress has not interposed to protect the property of persons and corporations employed in Government service from taxation, State taxation is not obnoxious.<sup>14</sup> A tax on water-craft in which goods are sold by retail is valid, although the goods were brought from another State.<sup>15</sup> See Supplement, *post*, 296.

1 *Paul v. Virginia*, 8 Wall. 168; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 576; *Louisiana v. Lathrop*, 10 La. An. 398; *Louisiana v. Ogden*, 10 La. An. 402; *Louisiana v. Fossdick*, 21 La. An. 434.

2 *Paul v. Virginia*, 8 Wall. 168; *Insurance Co. v. New Orleans*, 1 Woods, 89; *Home Ins. Co. v. Augusta*, 93 U. S. 116.

- 3 *Home Ins. Co. v. Augusta City*, 93 U. S. 116.
- 4 *Osborne v. Mobile*, 16 Wall. 492. And see *Home Ins. Co. v. Augusta*, 93 U. S. 116.
- 5 *Nathan v. Louisiana*, 8 How. 73.
- 6 *Chilvers v. People*, 11 Mich. 43; *People v. Babcock*, 11 Wend. 596.
- 7 *License Cases*, 5 How. 504.
- 8 *Nathan v. Louisiana*, 8 How. 73.
- 9 *People v. C. P. R. R. Co.* 43 Cal. 398; *Thompson v. Pacific R. R.* 9 Wall. 579.
- 10 *Nathan v. Louisiana*, 8 How. 73; *Missouri v. North*, 27 Mo. 460; *Biddle v. Commonwealth*, 13 Serg. & R. 405.
- 11 *Bradwell v. State*, 16 Wall. 139; *Cohen v. Wright*, 22 Cal. 194; *Aiken v. State Board of Health*, 11 Chic. L. N. 35.
- 12 *Delaware R. R. Tax Case*, 18 Wall. 232.
- 13 *Berney v. Tax Collector*, 2 Bailey, 654; *South Carolina v. Charleston*, 4 Rich. 289.
- 14 *Lane Co. v. Oregon*, 7 Wall. 77; *National Bank v. Commonwealth*, 9 Wall. 353; *Thomson v. Pac. R. R. Co.* 9 Wall. 591.
- 15 *Harrison v. Mayor*, 11 Miss. 581.

**Licenses.**—A license for the sale of goods, if imposed on all persons engaged in the same business, is not inconsistent with this provision;<sup>1</sup> but a license tax discriminating against products of other States is in conflict;<sup>2</sup> so, a State cannot impose a license tax on a traveling agent from other States.<sup>3</sup> Although letters-patent grant exclusive rights to make and vend, yet the State may regulate the use of that right as to merely internal commerce or police.<sup>4</sup> Although Congress may regulate licenses to carry on trade within a State for internal revenue purposes, yet the power of the State to tax, control, or regulate the business is not incompatible.<sup>5</sup> Cities may exercise all powers constitutionally conferred on them.<sup>6</sup> The United States licenses will not warrant carrying on a business in violation of a State law.<sup>7</sup> State prohibitory laws are operative against such licenses;<sup>8</sup> so a license under the Internal Revenue Act is no bar to an indictment under a State law.<sup>9</sup> A city council regulating the sale of intoxicating liquors is not unconstitutional;<sup>10</sup> so, a city ordinance exacting a license tax for the sale of beer or ale by the cask brought in for sale is not in conflict.<sup>11</sup> The State may regulate the sale of intoxicating liquors,<sup>12</sup> and require a license for the same,<sup>13</sup> or prohibit the sale altogether.<sup>14</sup>

1 *Dist. of Col. v. Humason*, 2 McArth. 162.

2 *Ward v. Maryland*, 12 Wheat. 490; *Conner v. Elliott*, 18 How. 593; *Woodruff v. Parham*, 8 Wall. 123; *Welton v. Missouri*, 91 U. S. 275; *Missouri v. North*, 27 Mo. 464. But see *Davis v. Dashiel*, Phil. N. C. 114.

3 *Welton v. Missouri*, 91 U. S. 275; *State v. Browning*, 62 Mo. 591.

4 *Patterson v. Kentucky*, 11 Chic. L. N. 183; 7 Am. L. R. 82.

5 License Tax Cases, 5 Wall. 462.

6 Logansport *v.* Seybold, 59 Ind. 225.

7 License Tax Cases, 5 Wall. 470; McGuire *v.* Commonwealth, 3 Wall. 387; Pervear *v.* Commonwealth, 5 Wall. 475.

8 Thurlow *v.* Massachusetts, 5 How. 504; McGuire *v.* Commonwealth, 3 Wall. 387; License Tax Cases, 5 Wall. 462; Pervear *v.* Commonwealth, 5 Wall. 480; Bertholf *v.* O'Rielly, 18 Am. Law. Reg. N. S. 119; Metropolitan Board of Health *v.* Barrie, 34 N. Y. 657; State *v.* Almond, 4 Am. D. R. 533; California *v.* Coleman, 4 Cal. 467.

9 Pervear *v.* Commonwealth, 5 Wall. 480; Commonwealth *v.* Owens, 114 Mass. 252.

10 License Tax Cases, 5 How. 624; Dowham *v.* Alexandria, 10 Wall. 173; Beall *v.* State, 4 Blackf. 107; Lunt's Case, 6 Me. 412.

11 Downham *v.* Alexander, 10 Wall. 173. See Huntington *v.* Cheesbro, 57 Ind. 74.

12 Bartemeyer *v.* Iowa, 18 Wall. 129; Groversville *v.* Howell, 70 N. Y. 287; O'Dea *v.* State, 57 Ind. 31.

13 License Cases, 5 How. 504; 13 N. H. 536; State *v.* Wheeler, 25 Conn. 290; Perdue *v.* Ellis, 18 Ga. 586; Ingersoll *v.* Skinner, 1 Denio. 540; Jones *v.* People, 14 Ill. 196; Santo *v.* State, 2 Iowa, 165; State *v.* Donohy, 8 Iowa, 396; Corwin *v.* Kimball, 41 Mass. 359; Corwin *v.* Clapp, 71 Mass. 97; Keller *v.* State, 11 Md. 525; State *v.* Moore, 14 N. H. 451; State *v.* Peckham, 3 R. I. 289; City *v.* Ahrens, 4 Strob. 241.

14 Bertholf *v.* O'Rielly, 18 Am. Law Reg. N. S. 119; Metropolitan Board of Excise *v.* Barrie, 34 N. Y. 657; Anderson *v.* Commonwealth, 13 Bush, 485. See Supplement, *post*, 297.

**Commerce with Indians.**—Under this power, Congress may prohibit all intercourse with Indians, except under a license,<sup>1</sup> or may punish all crimes committed within the Indian country not within the limits of a State,<sup>2</sup> or may prohibit traffic in liquors within or without the limits of the State,<sup>3</sup> or may prohibit the introduction of spirituous liquors into a place near an Indian reservation, although within the limits of a State.<sup>4</sup> The whole intercourse with Indians is vested by the Constitution in the United States,<sup>5</sup> although carried on within the limits of a State.<sup>6</sup> Its legislation is in its nature exclusive, and a plea of acquittal in an Indian court under Indian laws for an offense punishable under the laws of the United States is bad.<sup>7</sup> An Indian is not a foreign citizen or subject,<sup>8</sup> but he may be a resident alien in a State.<sup>9</sup> In all intercourse with foreign nations as to commerce, Indians are considered as within the jurisdictional limits of the United States.<sup>10</sup> Indians do not submit themselves to all the laws of a State because they seek its courts for the preservation of rights and the redress of wrongs.<sup>11</sup> An Indian may maintain an action in a State court to enforce his right to the enjoyment of property, real or personal.<sup>12</sup> They may file a bill in equity, on behalf of themselves and the residue of the nation on the reservation, to restrain a



trespass on their land.<sup>13</sup> An Indian is liable to be sued in a State court.<sup>14</sup> If an Indian dies before the laws of a State are extended over the reservation, a State court may grant letters of administration on his estate when they are so extended.<sup>15</sup> See Supplement, *post*, 299.

1 U. S. *v.* Ciska, 1 McLean, 254.

2 U. S. *v.* Rogers, 4 How. 557; Hemp. 450; U. S. *v.* Cha-to-kah-na-he-sha, Hemp. 27.

3 U. S. *v.* Shaw-Mux, 2 Sawy. 365; U. S. *v.* Tom, 1 Or. 26.

4 U. S. *v.* Forty-three Gallons, 93 U. S. 188.

5 Worcester *v.* Georgia, 6 Peters, 515.

6 U. S. *v.* Holliday, 3 Wall. 417; U. S. *v.* Forty-three Gallons, 93 U. S. 188.

7 U. S. *v.* Ragsdale, Hemp. 497.

8 Karrahoo *v.* Adams, 1 Dill. 344.

9 Parent *v.* Walmsley, 20 Ind. 82.

10 U. S. *v.* Tobacco Fact 1 Dill. 235; Worcester *v.* Georgia, 6 Peters, 515; Cherokee Na. *v.* Georgia, 5 Peters, 1; Mackey *v.* Cox, 18 How. 100; U. S. *v.* Rogers, 4 How. 557; The Kansas Indians, 5 Wall. 737.

11 The Kansas Indians, 5 Wall. 737.

12 Lobdell *v.* Hall, 3 Nev. 507.

13 Strong *v.* Waterman, 11 Paige, 607.

14 Jones *v.* Elsler, 3 Kan. 134; Murch *v.* Tomer, 21 Me. 535; Rubideaux *v.* Vallie, 12 Kan. 28.

15 Brasher *v.* Williams, 10 Ala. 630. But see, *contra*, Dolc *v.* Irish, 2 Barb. 639; U. S. *v.* Shanks, 15 Minn. 369.

**Indian tribes.**—Congress may exercise its power to regulate commerce with the Indian tribes to the same extent as with foreign nations;<sup>1</sup> but commerce cannot be held to apply to the ordinary business transactions between individuals;<sup>2</sup> so, it does not apply to individual sales of land, but is confined to lands held in common by tribes;<sup>3</sup> nor can it invalidate a contract between an Indian and a white man within the limits of a State, and not on an Indian reservation.<sup>4</sup> When the Indian Territory is within the limits of a State, Congress is limited to the regulation of commercial intercourse with such tribes as exist as a distinct community, governed by their own laws, and resting for their protection on the faith of treaties and laws of the Union.<sup>5</sup> If Indians are recognized as tribes by the political department, they will be so recognized by the courts.<sup>6</sup> The rights of a tribe as against State laws can only be changed by treaty stipulations or a voluntary abandonment of their tribal organization.<sup>7</sup> An Indian tribe within the limits of a State constitutes a distinct community, in which the laws of the State have no force, and citizens of the State have no right to enter but

with the assent of the tribe, and in conformity with treaties and acts of Congress.<sup>8</sup> Congress may regulate commerce between different tribes, and between individual Indians,<sup>9</sup> and may regulate trade between different tribes as well without as within the Indian country,<sup>10</sup> and over tribes on territory not within the limits of a State.<sup>11</sup> The tribes referred to are those which are in a condition to determine for themselves with whom they will have commerce.<sup>12</sup> Indians on a reservation within a State are not citizens or members of the body politic, but are considered as dependent tribes, governed by their own usages and chiefs.<sup>13</sup> If an Indian leaves his tribe or nation to take up his abode among white people, he is entitled to all the rights and privileges which belong to an emigrant from any foreign people.<sup>14</sup> The Indian tribes are herein distinguished from foreign nations and from the several States.<sup>15</sup> No Indian tribe can by treaty stipulate away any part of the sovereignty of a State guaranteed to it on its admission into the Union;<sup>16</sup> nor can it institute a suit at law in the name of the tribe to recover a reservation held by them in common.<sup>17</sup> Their right to the use of the soil can only be divested by the United States.<sup>18</sup>

1 U. S. v. Clsna, 1 McLean, 254.

2 Hicks v. Euharttonah, 21 Ark. 106.

3 Murray v. Wooden, 17 Wend. 531.

4 Hicks v. Euharttonah, 21 Ark. 103; Taylor v. Drew, 21 Ark. 485.

5 U. S. v. Bailey, 1 McLean, 234; U. S. v. Clsna, 1 McLean, 254; State v. Foreman, 8 Yerg. 256.

6 U. S. v. Holliday, 3 Wall. 407; The Kansas Indians, 5 Wall. 737.

7 The Kansas Indians, 5 Wall. 737.

8 Worcester v. Georgia, 6 Peters, 515; U. S. v. Clsna, 1 McLean, 254; Blair v. Pathkiller, 2 Yerg. 407; McKay v. Campbell, 2 Sawy. 133.

9 U. S. v. Holliday, 3 Wall. 417; U. S. v. Shaw Mux, 2 Sawy. 354.

10 U. S. v. Holliday, 3 Wall. 417; U. S. v. Clsna, 1 McLean, 254; U. S. v. Seveloff, 2 Sawy. 317.

11 Cherokee Tobacco, 11 Wall. 616; 1 Dill. 264.

12 Moor v. Veazie, 32 Me. 343; 31 Me. 360.

13 Holden v. Joy, 17 Wall. 211; Goodell v. Jackson, 20 Johns. 693; Jackson v. Wood, 7 Johns. 290; Strong v. Waterman, 11 Paige. 607.

14 Scott v. Sandford. 19 How. 393.

15 Cherokee Na. v. Georgia, 5 Peters, 1.

16 U. S. v. Forty-three Galls. Whisky, 19 Int. Rev. Rec. 158.

17 Strong v. Waterman, 11 Paige, 607.

18 Godfrey v. Beardsley, 4 McLean, 412; McKay v. Campbell, 2 Sawy. 133. See Supplement, *post*, 299.

**Indian laws and customs.**—So long as Indians adhere to their tribal customs and their affairs are managed by agents of the Government, they are not subject to State laws,<sup>1</sup> but have a right to regulate their own civil policy, their property, contracts, relations between husband and wife, and their inheritance.<sup>2</sup> Their usages and customs continue to be their law, although the tribe is on a reservation within the limits of a State.<sup>3</sup> They may adopt a white man or others into their tribe, and after adoption he is subject to all the burdens and entitled to all the immunities of a native born.<sup>4</sup> In the management of their internal concerns the Indians are dependent on no power.<sup>5</sup> A marriage between Indians, valid according to the usages of the tribe, will be deemed valid everywhere;<sup>6</sup> and the right of dissolution will be considered a term of the contract, of which either party may take advantage.<sup>7</sup> A marriage between Indians in a State after the tribe has removed from it, must conform to the laws of the State.<sup>8</sup> In the absence of proof the presumption is that in a savage tribe there are no laws regulating the descent of property, and that property belongs to the first occupant.<sup>9</sup> The liability of an innkeeper on an Indian reservation within State limits is to be determined according to the laws of the tribe.<sup>10</sup> The Cherokee Territory is a domestic Territory, and its laws and proceedings stand on the same footing as those of other Territories.<sup>11</sup>

1 *Boyer v. Dively*, 53 Mo. 510; *Morgan v. McGhee*, 5 Humph. 13; *Wall v. Williams*, 11 Ala. 826; 8 Ala. 43.

2 *Jones v. Laney*, 2 Tex. 342; *Goodell v. Jackson*, 20 Johns. 623; *Dole v. Irish*, 2 Barb. 639; *Boyer v. Dively*, 58 Mo. 510; *Morgan v. McGhee*, 5 Humph. 13.

3 *Wall v. Williams*, 11 Ala. 826; 8 Ala. 43; *Goodell v. Jackson*, 20 Johns. 623.

4 *U. S. v. Ragsdale*, Hemp. 497.

5 *Worcester v. Georgia*, 6 Peters, 515.

6 *Wall v. Williams*, 11 Ala. 826; 8 Ala. 43; *Morgan v. McGhee*, 5 Humph. 13; *Johnson v. Johnson*, 30 Mo. 72; *Boyer v. Dively*, 58 Mo. 510.

7 *Wall v. Williams*, 11 Ala. 826; 8 Ala. 43.

8 *Roche v. Washington*, 19 Ind. 53.

9 *Brashear v. Williams*, 10 Ala. 630.

10 *Horland v. Pack, Peck*, (Tenn.) 151.

11 *Mackey v. Coxe*, 18 How. 100.

<sup>4</sup> *To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.*

**Naturalization** is the act of adopting a foreigner and clothing him with all the privileges of a native citizen.<sup>1</sup> It applies to persons of foreign birth only,<sup>2</sup> and not to a free white person<sup>3</sup> born in this country, though of foreign parents, nor to a freeman of color born in the United States.<sup>4</sup> Indians may be naturalized by authority of Congress, like the subjects of any foreign government.<sup>5</sup> Races, tribes, and communities, irrespective of color, have been admitted in mass by a single act of national sovereignty.<sup>6</sup> Allegiance on the one side and protection on the other constitutes citizenship,<sup>7</sup> and the record of naturalization is evidence thereof.<sup>8</sup> Naturalization has a retroactive effect, as to forfeitures and title.<sup>9</sup> The power of regulating naturalization is exclusive in the Federal Government.<sup>10</sup> A State cannot make a citizen of the United States;<sup>11</sup> but a citizen of the United States is a citizen of the State where he resides,<sup>12</sup> and his rights of citizenship under each government will be different.<sup>13</sup> States may confer the right of citizenship on any one it thinks proper; but the rights and immunities thereby acquired would be restricted to the State which gave them.<sup>14</sup> The power given to Congress was intended to provide a rule for the action of the States, and not a rule for the action of the Federal Government.<sup>15</sup> Congress may fix upon the class of courts which may be invested with jurisdiction,<sup>16</sup> and no State can confer jurisdiction on any tribunal which does not come within the terms of the act of Congress;<sup>17</sup> but a State may prohibit its courts from entertaining proceedings for naturalization.<sup>18</sup> If a State law gives jurisdiction to the courts enumerated in the act of Congress, they may entertain proceedings for naturalization,<sup>19</sup> and Congress may empower them to naturalize aliens, and give validity to their acts.<sup>20</sup> A State cannot superadd any requisitions before an alien can acquire the privileges and immunities of a citizen,<sup>21</sup> but Congress may deprive an individual of the opportunity to enjoy a right belonging to him as a State citizen; yet it cannot deprive him of the right itself.<sup>22</sup>

1 *Osborn v. Bank of U. S.* 9 Wheat. 827; *Right of Expatriation*, 9 Op. Att.-Gen. 359.

2 *Scott v. Sandford*, 19 How. 419; *U. S. v. Rhodes*, 1 Abb. U. S. 45; *Lynch v. Clarke*, 1 Sand. Ch. 533.

3 *Citizenship*, 9 Op. Att.-Gen. 374.

4 *Smith v. Moody*, 26 Ind. 239; *Anon.* 4 Opin. Att. Gen. 147.

5 *Scott v. Sandford*, 19 How. 393.

6 *People v. Washington*, 36 Cal. 658. The Treaty of Washington conferred the elective franchise on British subjects resident in the disputed territory at the time of the Treaty—Opp. Att. Gen. 68 Me. 589.

- 7 *Smith v. Moody*, 26 Ind. 305.
- 8 *Starkie v. Chesapeake Ins. Co.* 7 Cranch, 420; *Spratt v. Spratt*, 4 Peters, 373; *The Acorn*, 2 Abb. U. S. 443; *In re Clark*, 18 Barbour, 444; *McCarthy v. Marsh*, 5 N. Y. 263; *Ritchie v. Putnam*, 13 Wend. 524.
- 9 *Walker v. Villavaso*, 6 Wall. 124; *Culverhouse v. Beach*, 1 Johns. Cas. 390.
- 10 *U. S. v. Villato*, 2 Dall. 372; *Chirac v. Chirac*, 2 Wheat, 259; *Houston v. Moore*, 5 Wheat. 1; *Ogden v. Saunders*, 12 Wheat. 277; *Passenger Cases*, 7 How. 533; *Scott v. Sandford*, 19 How. 393; *U. S. v. Rhodes*, 1 Abb. U. S. 412; *Matthews v. Ray*, 3 Cranch. C. C. 639; *Golden v. Prince*, 3 Wash. C. C. 313; *Ex parte Knowles*, 5 Cal. 300; *North Carolina v. Manuel*, 2 Dev. & B. 25; *North Carolina v. Newsom*, 5 Ired. 253; *Lynch v. Clarke*, 1 Sand. Ch. 533; *Commonwealth v. Ives*, 18 Pick. 103. The case of *Collet v. Collet*, 2 Dall. 294, being overruled; but see *Crandall v. Connecticut*, 10 Conn. 339.
- 11 *Lanz v. Randall*, 4 Dill. 425; 3 Cent. L. J. 688.
- 12 *Gassies v. Ballou*, 6 Peters, 761.
- 13 *U. S. v. Cruikshank*, 92 U. S. 542.
- 14 *Scott v. Sandford*, 19 How. 393; *Ex parte Wehlitz*, 16 Wis. 443.
- 15 *Ex parte Knowles*, 5 Cal. 300.
- 16 *Ex parte Knowles*, 5 Cal. 300; *Ex parte Beavins*, 33 N. H. 89.
- 17 *New Hampshire v. Whittemore*, 50 N. H. 245.
- 18 *Ex parte Stephens*, 70 Mass. 559; *Ex parte Beavins*, 33 N. H. 89.
- 19 *Ex parte Knowles*, 5 Cal. 300; *Rump v. Commonwealth*, 30 Penn. 475.
- 20 *Morgan v. Dudley*, 18 B. Mon. 693; *Rump v. Commonwealth*, 30 Pa. 475.
- 21 *Commonwealth v. Towles*, 5 Leigh, 743. And see *Page v. Allen*, 58 Pa. St. 333.
- 22 *Huber v. Reilly*, 53 Pa. St. 112.

**Bankruptcy** is the stoppage and breaking up of business from inability to carry it on.<sup>1</sup> The word bears a meaning co-extensive with insolvency, and is equivalent to that word in the Constitution.<sup>2</sup> The American system seems to have broken up the distinction between bankruptcy and insolvency.<sup>3</sup> It is a condition following upon the commission of certain acts defined by law.<sup>4</sup> The word is employed in the Constitution in the plural, as part of an expression "subject of bankruptcies," and over this subject Congress has general jurisdiction.<sup>5</sup> The subject of bankruptcies includes the distribution of the property of the debtor and his discharge from his contracts and legal liabilities, as well as incidental matters tending to these ends.<sup>6</sup> See Supplement, *post*, 299.

- 1 *Sturges v. Crowninshield*, 4 Wheat. 195; *Ex parte Breneman*, *Crabbe*, 465; *Arnold v. Maynard*, 2 Story, 354.
- 2 *Morse v. Hovey*, 1 Barb. Ch. 404; 1 Sand. Ch. 187.
- 3 *Sturges v. Crowninshield*, 4 Wheat. 198.
- 4 *Williamson v. Barrett*, 13 How. 111.

5 In re Klein, 1 How. 277, note; 2 N. Y. Leg. Obs. 184; In re Silverman, 4 Bank. Reg. 173; 1 Sawy. 410; 2 Abb. U. S. 243.

6 In re Silverman, 4 Bank. Reg. 173; 1 Sawy. 410; 2 Abb. U. S. 243; In re Reiman, 11 Bank. Reg. 21; 13 Ibid. 128; 7 Ben. 455; 12 Blatchf. 532.

**Uniformity.**—To come within the constitutional provision a bankrupt law must be uniform throughout the United States.<sup>1</sup> It is uniform when the assignee takes in each State whatever would have been available to execution creditors.<sup>2</sup> The uniformity required is as to the general policy and operation of the law, though it may in some minor particulars operate differently in different States.<sup>3</sup> Bankrupt laws are uniform when they allow the exemptions accorded in each State, though the amount of such exemptions may differ.<sup>4</sup>

1 Day v. Bardwell, 3 Bank. Reg. 455; 97 Mass. 246; In re Dillard, 9 Bank. Reg. 8; In re Deckert, 10 Ibid. 1; In re Duerson, 13 Bank. Reg. 183; In re Shipman, 14 Ibid. 570; Bush v. Lester, 55 Ga. 579; Kittredge v. Warren, 14 N. H. 509. *Contra*, In re Kean, 8 Bank. Reg. 367; In re Smith, Ibid. 401; 6 Ch. L. N. 33; In re Jordan, 10 Bank. Reg. 428; In re Smith, 14 Ibid. 295.

2 In re Ruth, 1 Bank. Reg. Sup. 154; In re Appold, Ibid. 178; In re Beckerford, 4 Bank. Reg. 59; 1 Dill. 45; In re Jordan, 8 Bank. Reg. 180; In re Deckert, 10 Bank. Reg. 1; 6 Ch. L. N. 310.

3 In re Jordan, 8 Bank. Reg. 180.

4 In re Appold, 16 Am. Law. Reg. 624; 1 Bank. Reg. 621.

**Power of Congress.**—To the power of Congress on the subject of bankruptcies there is no limitation; it may act on the whole subject with plenary discretion.<sup>1</sup> It is without restriction, save in its uniformity;<sup>2</sup> the power is general, unlimited, and unrestricted over the subject,<sup>3</sup> as to any particular class of persons,<sup>4</sup> or whether voluntary or involuntary.<sup>5</sup> The power of Congress extends to all cases providing for the distribution of the property of the debtor, and to his discharge from his contracts,<sup>6</sup> although it is not necessary that a bankrupt law should provide for the debtor's discharge.<sup>7</sup> The Constitution does not deny to Congress the power to infringe vested rights, or to violate the obligation of contracts;<sup>8</sup> it may release the debtor from contracts subsisting at the time when the law is passed,<sup>9</sup> but it cannot enable States to give a bankrupt exemption from debts created antecedently to the passage of the State exemption laws.<sup>10</sup> Yet it has power to define what and how much of the debtor's property shall be exempt,<sup>11</sup> and State exemption laws in conflict must yield.<sup>12</sup> It may pass a law which will make void an assignment valid under State laws.<sup>13</sup> The power to enact implies the power to make the law efficient.<sup>14</sup> Congress may not only establish uniform laws on the subject, but may commit

the execution of the system to such Federal courts as it may see fit, and prescribe such modes of procedure as it may deem suitable.<sup>15</sup> The power of Congress is exclusive only when exercised,<sup>16</sup> or when States are expressly prohibited.<sup>17</sup> See Supplement, *post*, 299.

1 In re Irwine, 1 Pa. L. J. 82.

2 Kunzler v. Kohans, 5 Hill, 317; In re Klein, 1 How. 277; 2 N. Y. Leg. Obs. 184; 1 Bank. Reg. 542.

3 In re Silverman, 4 Bank. Reg. 173; 1 Sawy. 410; 2 Abb. U. S. 243; In re Reiman, 11 Bank. Reg. 21; 13 Ibid. 128; 7 Ben. 455; Thompson v. Alger, 53 Mass. 428.

4 In re Klein, 1 How. 277; 2 N. Y. Leg. Obs. 184; In re Cal. Pac. R. R. Co. 11 Bank. Reg. 193; In re Silverman, 4 Ibid. 173; 1 Sawy. 410; 2 Abb. U. S. 243; Morse v. Hovey, 1 Sand. Ch. 187; 1 Barb. Ch. 404; Kunzler v. Kohans, 5 Hill. 317.

5 In re Klein, 1 How. 277; 2 N. Y. Leg. Obs. 184; State Bank v. Willborn, 6 Ark. 35; Lalor v. Wattles, 9 Ill. 225; Kunzler v. Kohans, 5 Hill. 317; Loud v. Pierce, 25 Me. 235; Thompson v. Alger, 53 Mass. 428; Dresser v. Brooks, 3 Barb. 429; Hastings v. Fowler, 2 Ind. 216; Reed v. Vaughan, 15 Mo. 137; Cutter v. Folsom, 17 N. H. 139; McCormick v. Pickering, 4 N. Y. 276; Keen v. Mould, 16 Ohio, 12; Rowan v. Holcomb, Ibid. 463; In re Irwine, 1 Pa. L. J. 82.

6 In re Klein, 1 How. 277; In re Silverman, 1 Bank. Reg. 173; Kunzler v. Kohans, 5 Hill, 317; Sackett v. Andross, 5 Hill, 327; McCormick v. Pickering, 4 N. Y. 282; In re Cal. Pac. R. R. Co. 3 Sawy. 242.

7 In re Cal. Pac. R. R. Co. 11 Bank. Reg. 193; Van Nostrand v. Barr, 2 Bank. Reg. 485; 30 Md. 128.

8 In re Jordan, 8 Bank. Reg. 180; In re Kean, Ibid. 368; In re Smith, Ibid. 407; Carpenter v. Pennsylvania, 17 How. 463; Legal Tender Cases, 12 Wall. 457; Satterlee v. Matthewson, 2 Peters, 330; Evans v. Eaton, Peters C. C. 322; Bloomer v. Stolley, 5 McLean, 153; Hague v. Powers, 39 Barb. 458; Watson v. Mercer, 8 Peters, 110; In re Everett, 9 Bank. Reg. 93.

9 Corner v. Miller, 1 Bank. Reg. 99; In re Klein, 1 How. 277, note; 2 N. Y. Leg. Obs. 185; Morse v. Hovey, 1 Barb. Ch. 404; 1 Sand. Ch. 187; Kunzler v. Kohans, 5 Hill, 317; Sackett v. Andross, Ibid. 327; Loud v. Pierce, 25 Me. 235; Keen v. Mould, 16 Ohio, 12; McCormick v. Pickering, 4 N. Y. 276; In re Irwine, 1 Pa. L. J. 82.

10 Gunn v. Barry, 8 Bank. Reg. 1; In re Dillard, 9 Bank. Reg. 16; In re Everett, 9 Bank. Reg. 93.

11 In re Reiman, 11 Bank. Reg. 21; 13 Ibid. 128; 7 Ben. 455.

12 In re Brown, 3 Bank. Reg. 61.

13 In re Breneman, Crabbe, 456.

14 Russell v. Cheatham, 16 Miss. 703.

15 Sherman v. Bingham, 5 Bank. Reg. 34; 1 Low. 575; Goodall v. Tuttle, 7 Bank. Reg. 193; 3 Biss. 219; Mitchell v. Manuf. Co. 2 Story, 648.

16 Ogden v. Saunders, 9 Wheat. 1; Passenger Cases, 7 How. 282; Commonwealth v. O'Hara, 1 Bank. Reg. Supp. 20; In re Brown, 3 Bank. Reg. 61; In re Brinkman, 7 Bank. Reg. 425; Martin v. Berry, 37 Cal. 208.

17 In re Brinkman, 7 Bank. Reg. 425.

**State insolvent laws.**—In the absence of congressional legislation on the subject of bankruptcies, the States may pass insolvent laws,<sup>1</sup> if they do not violate the obligation of contracts.<sup>2</sup> It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the States.<sup>3</sup> The right of the States is not extinguished, but merely suspended by the enactment of a general bankrupt law.<sup>4</sup> They are not thereby abrogated, they operate until the bankrupt law attaches on the person and property of the debtor,<sup>5</sup> and they revive and are in force on the repeal of the bankrupt law.<sup>6</sup> If the State court has acquired jurisdiction of a case in insolvency, it may, nevertheless, proceed with the case to its final conclusion, and its action will be valid as if no law upon the subject had been passed by Congress.<sup>7</sup> The jurisdiction of the State court attaches from the moment when it makes an order staying creditors from interference with the property of the debtor.<sup>8</sup> But the bankrupt act, as soon as it took effect, *ipso facto* suspended all action upon future cases arising under the insolvent laws of the State,<sup>9</sup> and cases pending where the surrender of the debtor's property had not been ordered.<sup>10</sup> So, State laws relating to insolvent corporations were superseded, and State courts could not go beyond decreeing a forfeiture of their charter.<sup>11</sup> A provision in a State law which prohibits a transfer by an insolvent corporation with intent to give a preference, is superseded.<sup>12</sup> An attachment law which permits a writ of attachment to issue in cases which would authorize proceedings in bankruptcy, is superseded.<sup>13</sup> See Supplement, *post*, 299.

1 *Baldwin v. Hale*, 1 Wall. 228; *Ogden v. Saunders*, 12 Wheat. 213; *Farmers & Mechs. Bank v. Smith*, 6 Wheat. 131; *Stevens v. Brown*, 11 Bank. Reg. 570; *Cook v. Moffat*, 5 How. 316; *Campbell v. Claudius*, Peters C. C. 434; *Snydam v. Broadnax*, 14 Peters, 67; *Mather v. Bush*, 16 Johns. 233; *Matt. of Wendell*, 19 Johns. 153.

2 *Sturges v. Crowninshield*, 4 Wheat. 196; *Ogden v. Saunders*, 12 Wheat. 213; *Martin v. Berry*, 37 Cal. 208; 2 Bank. Reg. 620; *Boyle v. Zacharie*, 6 Peters, 348; *McMillan v. McNeill*, 4 Wheat. 209.

3 *Sturges v. Crowninshield*, 4 Wheat. 196; *Adams v. Storey*, 1 Palme, 79; *Blanchard v. Russell*, 13 Mass. 1; *Betts v. Bagley*, 29 Mass. 572; *Pugh v. Russel*, 2 Blackf. 394; *Alexander v. Gibson*, 1 Nott & McC. 480; *Farmers' Bank v. Smith*, 6 Wheat. 131. But see, *contra*, *Golden v. Prince*, 3 Wash. C. C. 313; *Mason v. Nash*, 1 Breese, 16; *Vanuxem v. Hazelhursts*, 1 South. N. J. 192; *Olden v. Hallet*, 2 South. N. J. 466; *Balentine v. Haight*, 1 Harr. N. J. 196.

4 *Sturges v. Crowninshield*, 4 Wheat. 196; *Martin v. Berry*, 37 Cal. 208; 2 Bank. Reg. 188; *Van Nostrand v. Barr*, 2 Bank. Reg. 154; 30 Md. 128.

5 *Reed v. Taylor*, 4 Bank. Reg. 710; 32 Iowa, 209; *In re Zeigenfuss*, 2 Ired. 463.

6 *Lavender v. Gosnell*, 12 Bank. Reg. 282; 43 Md. 153.



7 *Martin v. Berry*, 2 Bank. Reg. 188; 37 Cal. 208; *Meekins v. Creditors*, 3 Bank. Reg. 511; 19 La. An. 477; *Lavender v. Gosnell*, 12 Bank. Reg. 282; 43 Md. 153; *Larrabee v. Talbot*, 5 Gill. 428; *In re Horton*, 5 Law. Rep. 462; *In re Judd*, *Ibid.* 328; *Longis v. Creditors*, 20 La. Am. 15; *Dwight v. Simon*, 4 *Ibid.* 40; *Judd v. Ives*, 45 Mass. 401; *West v. Creditors*, 5 Rob. La. 261; 8 *Ibid.* 123; *Minot v. Thacher*, 48 Mass. 348.

8 *Martin v. Berry*, 2 Bank. Reg. 188; 37 Cal. 208; *Meekins v. Creditors*, 3 Bank. Reg. 511; 19 La. An. 511.

9 *Corner v. Miller*, 1 Bank Reg. 403; *Commonwealth v. O'Hara*, 1 Bank. Reg. 19; 6 Law Reg. N. S. 765; *Perry v. Langley*, 2 Bank. Reg. 180; 7 Amer. Law Reg. 429; *Van Nostrand v. Barr*, 2 Bank. Reg. 154; 30 Md. 128; *Martin v. Berry*, 2 Bank. Reg. 188; 37 Cal. 208; *Cassard v. Kroner*, 4 Bank. Reg. 569; *In re Reynolds*, 9 Bank. Reg. 50; 8 R. I. 485; *Rowe v. Page*, 13 Bank. Reg. 366; 54 N. H. 190; *Shears v. Solhinger*, 10 Abb. Pr. N. S. 287; *Bishop v. Loewen*, 1 Pa. L. J. 363; *In re Eames*, 2 Story, 322; 2 Bank. Reg. 188. The date of the suspension was June 1st, 1867; *Martin v. Berry*, 2 Bank. Reg. 188; 37 Cal. 208; *Day v. Bardwelle*, 3 Bank. Reg. 455; *Chamberlain v. Perkins*, 51 N. H. 336; *In re Wynne*, Chase, 227.

10 *Fisk v. Montgomery*, 21 La. An. 446; *West v. Creditors*, 4 Rob. La. 88; 8 *Ibid.* 123.

11 *Thornhill v. Bank of Louisiana*, 3 Bank. Reg. 110; 5 *Ibid.* 367; 1 Woods, 1; *In re Merch. Ins. Co.* 6 Bank. Reg. 43; 3 Bliss. 162; *In re Independent Ins. Co.* 6 Bank. Reg. 169, 260; 1 Holmes, 103; 2 Low, 97, 187; *Pitt v. Archer*, 6 Bank. Reg. 465; 9 Blatchf. 559; *Shryock v. Bashore*, 13 Bank. Reg. 481.

12 *French v. O'Brien*, 52 How. Pr. 394.

13 *Tobin v. Trump*, 3 Brewst. 288.

**When superseded.**—The bankrupt act does not *ipso facto* suspend State laws for the collection of debts.<sup>1</sup> So, a statute for the more effectual appropriation of a debtor's property is not suspended.<sup>2</sup> So, where debts do not exceed the amount specified in the bankrupt laws there is no conflict of laws.<sup>3</sup> So the State insolvent law remains in full force in respect to matters over which the bankrupt law declines to take jurisdiction.<sup>4</sup> The bankrupt law does not supersede a State law regulating assignments for the benefit of creditors;<sup>5</sup> such a law is not a part of the bankrupt law,<sup>6</sup> but an assignment made as a part of the machinery of a State insolvent law is void.<sup>7</sup> A State law to abolish imprisonment on civil process, and whose aim and purpose is simply to liberate the person, is not superseded,<sup>8</sup> nor a law which merely protects the person from imprisonment, although it provides for the distribution of his property,<sup>9</sup> nor a law providing for the arrest and punishment of fraudulent debtors.<sup>10</sup> A State law providing for the protection of savings banks and their depositors is valid, although passed while the bankrupt law was in force.<sup>11</sup> State laws are operative in all cases which are not within the provisions of the bankrupt law.<sup>12</sup> If any State exemption law is in conflict with acts of Congress, it must yield.<sup>13</sup> See Supplement, *post*, 299.

- 1 *Chandler v. Siddle*, 10 Bank. Reg. 236; 3 Dill. 477.
- 2 *Berthelon v. Betts*, 4 Hill, 577.
- 3 *Shepardson's Appeal*, 36 Conn. 23.
- 4 *Geery's Appeal*, 43 Conn. 289.
- 5 *In re Hawkins*, 2 Bank. Reg. 378; 34 Conn. 548; *Reed v. Taylor*, 4 Bank. Reg. 710; 32 Iowa, 209; *Maltbie v. Hotchkiss*, 5 Bank. Reg. 485; 38 Conn. 80; *Mayer v. Hellman*, 13 Bank. Reg. 440; 91 U. S. 496; *Von Hein v. Elkus*, 15 Bank. Reg. 194; *Ebersole v. Adams*, 13 Bank. Reg. 141; 10 Bush, 83; *Linthicum v. Fenley*, 11 Bush, 131.
- 6 *Cook v. Rogers*, 13 Bank. Reg. 97; 31 Mich. 391.
- 7 *Rowe v. Page*, 13 Bank. Reg. 366; 54 N. H. 190; *Shryock v. Bashore*, 13 Bank. Reg. 481; 15 Ibid. 283; 82 Pa. St. 159.
- 8 *In re Reynolds*, 9 Bank. Reg. 50; 8 R. I. 485; *In re Rank, Crabbe*, 493; *Shears v. Solhinger*, 10 Abb. Pr. N. S. 287; *Steelman v. Mattix*, 36 N. J. 344; *Jordan v. Hall*, 9 R. I. 218.
- 9 *Sullivan v. Hieskill, Crabbe*, 525; 2 Pa. L. J. 283; *Stockwell v. Silloway*, 100 Mass. 287.
- 10 *Scully v. Kirkpatrick*, 79 Pa. St. 324; *Gregg v. Hilsen*, 34 Leg. Int. 20.
- 11 *Simpson v. Savings Bank*, 15 Bank. Reg. 385; 56 N. H. 466.
- 12 *Shepardson's Appeal*, 36 Conn. 23; *Clarke v. Ray*, 1 Har. & J. 318.
- 13 *Martin v. Hunter*, 1 Wheat. 304; *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; *Holmes v. Jennison*, 14 Peters, 540; *U. S. v. Hart, Peters C. C.* 390; *In re Brown*, 3 Bank. Reg. 255; *Commonwealth v. Kimball*, 24 Pick. 359.

**Validity of State insolvent laws.**—State insolvent laws which attempt to discharge from all liability for debts contracted previous to discharge,<sup>1</sup> or from contracts of foreign creditors, are repugnant to this provision of the Constitution,<sup>2</sup> and to this effect the States are deemed foreign to each other.<sup>3</sup> Such laws can have no extra-territorial effect so as to operate upon the rights of non-residents of the State,<sup>4</sup> whether the residents of another State be citizens of the United States or foreigners, unless where a citizen of such other State voluntarily becomes a party to the proceedings;<sup>5</sup> so, the claim of a citizen of another State will not be barred by a discharge under the State insolvent laws, although the debt was made payable in the State,<sup>6</sup> and this without reference to the place where the contract was made.<sup>7</sup> The fact that the original indebtedness has been converted into a judgment in no way changes the legal rights and liabilities of the parties. A foreign creditor by suing for a debt in a State court does not adopt its insolvent laws or thereby waive his constitutional immunity;<sup>8</sup> the act of waiving a constitutional privilege or immunity must be unequivocal.<sup>9</sup> If the plaintiff was a resident of the State at the time the judgment was entered, his removal from the State before commencement of insolvency proceedings will not bar a

release of the debt.<sup>10</sup> A citizen of another State who voluntarily makes himself a party to the proceedings in insolvency, and receives a dividend, abandons his extra-territorial immunity and his claim is barred by the discharge,<sup>11</sup> unless the State court has no jurisdiction of the case;<sup>12</sup> so, a mere appearance to oppose a discharge will not render such discharge a bar to the demand.<sup>13</sup> A creditor makes himself a party to the proceedings by proving his debt;<sup>14</sup> so, if a foreign creditor unites in recommending a trustee, he becomes a party to the proceedings.<sup>15</sup> If a foreign debtor removes to the State where the creditor resides and there obtains his discharge, it will be valid against such creditor.<sup>16</sup> See Supplement, *post*, 290.

1 Farmers & Mechanics' Bank v. Smith, 6 Wheat. 121, Ogden v. Saunders, 12 Wheat. 213.

2 Farmers & Mechanics' Bank v. Smith, 6 Wheat. 121; Suydam v. Broadnax, 14 Peters, 67.

3 Cook v. Moffat, 5 How. 295; Scott v. Sanford, 19 How. 232, Deers v. Rhea, 5 Tex. 354.

4 Baldwin v. Hale, 1 Wall. 223; 3 Am. Law Reg. N. S. 402; Von Glahn v. Varrenne, 1 Dill. 515; Pratt v. Chase, 44 N. Y. 597; 19 Abb. Pr. 150; Emery v. Greenough, 3 Dall. 309; McMillan v. McNeill, 4 Wheat. 209; Ogden v. Saunders, 12 Wheat. 213; Boyle v. Zacharie, 6 Peters, 625; Boyle v. Turner, 6 Peters, 625; Cook v. Moffat, 5 How. 295; Baldwin v. Hale, 1 Wall. 223; 1 Cliff. 511; Giltman v. Lockwood, 4 Wall. 402; Woodhull v. Wagner, 1 Wall. 307; 164, Hinkley v. Marean, 3 Mass. 484, Springer v. Foster, 2 Stor. 47, Norton v. Cook, 9 Conn. 314, 154, Collins v. Rodolph, 3 Greenl. 384, Smith v. Smith, 2 Johns. 2, Frey v. Kirk, 4 Gill & J. 509, Ta. Moore, 1 Mass. 198; Bradford v. 10 Mass. 337; Pliske v. Foster, 5 55; Telbets v. Pickering, 59 Ma. 67, Choteau v. Richardson, 94 M. 43; Bancher v. Fisk, 33 Me. 316; v. Goodwin, 32 Me. 535; Farelira, 1st, 1 Harr. 196; Vanuxem v. Hazl. 14, 35 N. H. 457; Donnelly v. Corb. 349; Shelton v. Wade, 14 Tex. 52.

5 Pratt v. Chase, 44 N. Y. 597; 19 Abb. Pr. 150.

6 Baldwin v. Hale, 1 Wall. 223; Baldwin v. Bank, 1 Wall. 234; 1 Cliff. 519; Stevenson v. King, 2 Cliff. 1, Riston v. Content, 4 Wash. C. C. 476; Norton v. Cook, 9 Conn. 314; Anderson v. Wheeler, 25 Conn. 603; Frick v. Bugbee, 48 Me. 9; Chase v. Flagg, Ibid. 182; Kelley v. Drury, 91 Mass. 27; Dameritt v. Exchange Bank, 20 Law Rep. 606; Newmarket Bank v. Butler, 45 N. H. 226; Donnelly v. Corbett, 7 N. Y. 500.

7 Baldwin v. Hale, 1 Wall. 223; Poe v. Duck, 5 Md. 1, Woodbridge v. Allen, 5 Mass. 470; Savage v. Marsh, 51 Mass. 594. But see Sherrill v. Hopkins, 1 Cow. 103; Raymond v. Merchant, 3 Cow. 147.

8 Worthington v. Jerome, 5 Blatchf. 279, Easterly v. Goodwin, 35 Conn. 279; Wyman v. Mitchell, 1 Cow. 316, Watson v. Bourne, 10 Mass. 227; McCarty v. Gibson, 5 Gratt. 307; Choteau v. Richardson, 94 Mass. 222; Hawley v. Hunt, 27 Iowa. 303; Poe v. Duck, 5 Md. 1, Donnelly v.

Corbett, 7 N. Y. 500; Whitney v. Whiting, 35 N. H. 457; Soule v. Chase, 39 N. Y. 342; 1 Abb. Pr. N. S. 48. But see Davidson v. Smith, 1 Biss. 346; Betts v. Bagley, 29 Mass. 572.

9 Donnelly v. Corbett, 7 N. Y. 500.

10 Brown v. Bridge, 106 Mass. 563.

11 Clay v. Smith, 3 Peters, 411; Gardner v. Lee's Bank, 11 Barb. 558; Journey v. Gardner, 65 Mass. 355; Woodbridge v. Wright, 3 Conn. 523.

12 Agnew v. Platt, 32 Mass. 417.

13 Norton v. Cook, 9 Conn. 314; McCarty v. Gibson, 5 Gratt. 307; Collins v. Rodolph, 3 Greene, (Iowa) 299.

14 Blackman v. Green, 24 Vt. 17.

15 Jones v. Horsey, 4 Md. 306.

16 Beal v. Burchstead, 64 Mass. 523. And see Babcock v. Weston, 1 Gall. 168.

**Validity of insolvency discharge.**—If both parties are citizens of the State a discharge will be a bar to the debt, although the contract was made and was to be performed in another State;<sup>1</sup> so if the parties became citizens of the State before the filing of the petition for discharge;<sup>2</sup> so, where both parties were citizens of the same State, a discharge will bar an action upon the contract in another State,<sup>3</sup> although the creditor be an alien.<sup>4</sup> It will release the debtor from the contract, although the creditor had removed to another State before it was granted.<sup>5</sup> If the indorser and maker of a note reside in the State at the time the discharge is granted, the discharge will bar the debt;<sup>6</sup> but if the note was indorsed before maturity to a citizen of another State, by whom it was held at the time of the application for a discharge, it will not release the debtor,<sup>7</sup> but otherwise if it be taken after it is overdue,<sup>8</sup> unless taken before the filing of the petition.<sup>9</sup> A discharge not valid under the Constitution in the Federal courts is equally invalid in the State courts.<sup>10</sup>

1 Marsh v. Putnam, 63 Mass. 551. But see Smith v. Mead, 3 Conn. 253.

2 Hall v. Winchell, 33 Vt. 538. But see Witt v. Follett, 2 Wend. 457.

3 Hempstead v. Reed, 6 Conn. 480; Williams v. Guignard, 2 How. (Miss.) 724; Stone v. Tibbetts, 26 Me. 110; Pitkin v. Thompson, 30 Mass. 64; Hall v. Boardman, 14 N. H. 38; Wheelock v. Leonard, 20 Pa. St. 440; Urton v. Hunter, 2 W. Va. 83.

4 Von Glahn v. Varrenne, 1 Dill. 515.

5 Brigham v. Henderson, 55 Mass. 430; Converse v. Bradley, Ibid. 434; Stoddard v. Harrington, 100 Mass. 87; Stevens v. Norris, 30 N. H. 466.

6 Wheelock v. Leonard, 20 Pa. St. 440.

7 Towne v. Smith, 1 Wood & M. 115; 9 Law Rep. 12; Anderson v. Wheeler, 25 Conn. 603; Ballard v. Webster, 9 Abb. Pr. 404; Smith v. Gardner, 4 Bosw. 54; Bancher v. Fisk, 33 Me. 316; Chase v. Flagg, 48 Mo. 182; Felch v. Bugbee, Ibid. 9; Braynard v. Marshall, 25 Mass. 194; Savoye v. Marsh, 51 Mass. 594; Houghton v. Maynard, 71 Mass. 552;

*Eaton v. Sweetser*, 84 *Ibid.* 70, note. But see *Bank v. Squires*, 8 *La. An.* 318.

8 *Hall v. Boardman*, 14 *N. H.* 38.

9 *Fessenden v. Willey*, 84 *Mass.* 67.

10 *Ogden v. Saunders*, 12 *Wheat.* 213; *Shaw v. Robbins*, *Ibid.* 369; *Cook v. Moffat*, 5 *How.* 295; *Hammett v. Anderson*, 3 *Conn.* 304; *Smith v. Healey*, 4 *Conn.* 49; *Atwater v. Townsend*, *Ibid.* 47; *Frey v. Kirk*, 4 *Gill. & J.* 509; *Fisher v. Wheeler*, 5 *La. An.* 271; *Spear v. Peabody*, 10 *Ibid.* 145; *Kimberly v. Ely*, 23 *Mass.* 440; *Beers v. Rhea*, 5 *Tex.* 349. But see *Van Hook v. Whitlock*, 26 *Wend.* 40; 7 *Paige*, 373.

*5 To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;*

**Money** as here used means gold, silver, and copper coins.<sup>1</sup> "To coin money" is to mould into form a metallic substance of intrinsic value.<sup>2</sup> The power was created for the purpose of making and preserving uniformity and purity in the standard of value.<sup>3</sup> The power to regulate the value of money is exclusive in Congress,<sup>4</sup> and without limitation or restriction<sup>5</sup> as to coining and punishing for the production of a false imitation.<sup>6</sup> It is in the discretion of Congress to make gold and silver, or anything else, a legal tender.<sup>7</sup> The legal tender acts do not fix a standard of value, or regulate money values, or make that money which has no intrinsic value.<sup>8</sup> The grant of power to coin money is not an implied prohibition against making treasury notes a legal tender;<sup>9</sup> the power to coin and the power to declare anything a legal tender are distinct powers.<sup>10</sup> The grant of power to coin does not make that coin of necessity a legal tender at the fixed standard.<sup>11</sup> The power to fix the standard of weights and measures is exclusive in Congress when exercised.<sup>12</sup>

1 *Maynard v. Newman*, 1 *Nev.* 271; *Thayer v. Hedges*, 22 *Ind.* 301; *Hague v. Powers*, 39 *Barb.* 453; *Metropolitan Bank v. Van Dyck*, 27 *N. Y.* 430.

2 *Griswold v. Hepburn*, 2 *Duval*, 29.

3 *U. S. v. Marigold*, 9 *How.* 567; *Campbell v. U. S.* 10 *Law Rep.* 400.

4 *Van Husan v. Kanouse*, 13 *Mich.* 303.

5 *Maynard v. Newman*, 1 *Nev.* 271; *George v. Concord*, 45 *N. H.* 434; *Shollenberger v. Brinton*, 52 *Pa. St.* 9.

6 *Fox v. Ohio*, 5 *How.* 433.

7 *Alexander v. Dunn*, 6 *Wheat.* 220; *Martin v. Hunter*, 1 *Wheat.* 304; *Cohens v. Virginia*, 6 *Wheat.* 264; *Briscoe v. Bank of Kentucky*, 11 *Peters.* 257; *Legal Tender Cases*, 12 *Wall.* 457; *Metropolitan Bank v. Van Dyck*, 27 *N. Y.* 427; *Norris v. Clymer*, 2 *Pen.* 277; *Moor v. City of Reading*, 21 *Pa. St.* 188; *People v. Green*, 2 *Wend.* 274; *People v. Constant*, 11 *Wend.* 511.

8 *Legal Tender Cases*, 12 *Wall.* 553.

9 *Legal Tender Cases*, 12 *Wall.* 553.

10 *Thayer v. Hedges*, 22 Ind. 282.

11 *Van Husen v. Kanouse*, 13 Mich. 303.

12 *Passenger Cases*, 7 How. 282; *Weaver v. Fegley*, 29 Pa. St. 27.

<sup>6</sup> *To provide for the punishment of counterfeiting the securities and current coin of the United States*;

**Counterfeiting.** — Congress may provide for the punishment of the offense of passing, uttering, or selling counterfeit coin,<sup>1</sup> or for bringing in from a foreign country counterfeit coin made in the similitude of United States coins.<sup>2</sup> So Congress may provide for the punishment for counterfeiting foreign coins made current by the laws of the United States.<sup>3</sup> It is competent for Congress to protect the sacredness of the metallic currency, even if counterfeited for an innocent purpose.<sup>4</sup> There is a distinction between counterfeiting and uttering false coin. Counterfeiting applies to the act of making, as distinguished from the act of circulating.<sup>5</sup> The former is an offense directly against the Government; the latter is an offense against the State, and may be punished by the laws of the State.<sup>6</sup> That the power of Congress is not exclusive;<sup>7</sup> that States have not a concurrent right to provide for punishment;<sup>8</sup> that this clause does not prevent a State from passing laws to punish counterfeiting.<sup>9</sup> A State may impose a penalty upon the act of keeping moulds and tools adapted to counterfeiting,<sup>10</sup> or punish the offense of keeping counterfeit coin with the intent to pass the same,<sup>11</sup> or for the counterfeiting of a national bank-note;<sup>12</sup> so a State may punish for a cheat, though the instrument be a base coin in the similitude of a dollar of the United States coinage.<sup>13</sup>

1 *U. S. v. Marigold*, 9 How. 560; harmonizing *Fox v. Ohio*, 5 How. 410; this power questioned in *U. S. v. ———*, 2 Law. Rep. N.S. 90.

2 *U. S. v. Marigold*, 9 How. 560; *Legal Tender Cases*, 12 Wall. 658; *Fox v. Ohio*, 5 How. 410; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 450.

3 *U. S. v. Gardner*, 10 Peters, 618; *U. S. v. Brown*, 4 McLean, 142; *U. S. v. Burns*, 5 McLean, 23.

4 *U. S. v. King*, 5 McLean, 210.

5 *Campbell v. U. S.* 10 Law Rep. 400.

6 *Fox v. Ohio*, 5 How. 410; *U. S. v. Marigold*, 10 How. 560; *People v. White*, 34 Cal. 183; *Harlan v. People*, 1 Doug. Mich. 207; *Slizemore v. State*, 3 Head, 26; *State v. Antonio*, 2 Tread. 776; *U. S. v. ———*, 2 Law Rep. N.S. 92.

7 *Fox v. Ohio*, 5 How. 410; *U. S. v. Marigold*, 9 How. 560.

8 *Mattison v. Missouri*, 3 Mo. 421, and dissenting opin.; *Fox v. Ohio*, 5 How. 433.

9 *People v. White*, 34 Cal. 183; *Fox v. Ohio*, 5 How. 410.

- 10 *State v. Brown*, 2 Or. 221.
- 11 *Sizemore v. State*, 3 Head, 26.
- 12 *State v. Randall*, 2 Ark. 89.
- 13 *Fox v. Ohio*, 5 How. 410; *U. S. v. Marigold*, 9 How. 539; *Moore v. People*, 14 How. 20.

*To establish post-offices and post-roads;*

**To establish** comprehends the renting or building of a house, and the construction and repair of a road, and the appropriation of money for such purposes;<sup>1</sup> or the making of contracts relating thereto;<sup>2</sup> or to authorize a telegraph company to construct, maintain, and operate its lines along any military or post-road.<sup>3</sup> It is under this provision that Congress has adopted mail regulations, and punished depredations on the mails.<sup>4</sup> States have concurrent power to punish for a highway robbery of the mail.<sup>5</sup> Congress may forbid transportation by mail of circulars concerning lotteries.<sup>6</sup> A mail contractor must pay the same tolls as other citizens.<sup>7</sup> As to post-roads, the power of Congress is supreme and plenary, intended to embrace everything necessary and proper for regulating and transporting the mails,<sup>8</sup> and is restricted only to such roads as are regularly laid out under the laws of the several States.<sup>9</sup> The power to establish post-roads is deemed exhausted in the designation of roads on which the mails are to be transported.<sup>10</sup> A statute interfering with the rights of a telegraph company authorized by Congress to set up its lines along a military or post-road is unconstitutional.<sup>11</sup> Congress may use any means appropriate in the exercise of this power, as appointing postmasters, defining their duties and compensation, providing for carriage of mails, punishing for crimes or obstructions to the service.<sup>12</sup>

1 *Searight v. Stokes*, 3 How. 151; *Neil v. State*, 3 How. 720; *Dickey v. Turnpike Co.* 7 Dana, 113.

2 *Searight v. Stokes*, 3 How. 151.

3 *Pensacola Tel. Co. v. Western U. Tel. Co.* 96 U. S. 1; 1 Woods, 643.

4 *Sturtevant v. City of Alton*, 3 McLean, 393; *U. S. v. Rhodes*, 1 Abb. U. S. 50.

5 *Houston v. Moore*, 5 Wheat. 34.

6 *Ex parte Jackson*, 96 U. S. 727.

7 *Dickey v. Turnpike Co.* 7 Dana, 113.

8 *Dickey v. Turnpike Co.* 7 Dana, 113.

9 *Penn. v. Wheel. & B. Br. Co.* 18 How. 421; *Dickey v. Turnpike Co.* 7 Dana, 113.

10 *U. S. v. Railroad Br. Co.* 6 McLean, 517.

11 *Pensacola Tel. Co. v. Western U. Tel. Co.* 96 U. S. 1.

12 *U. S. v. Rhodes*, 1 Abb. U. S. 50. See Supplement, *post*, 300.

<sup>8</sup> *To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;*

**Power defined.**—The power granted in this provision is general, and it rests in Congress to say for what time and under what circumstances the patent for an invention shall be granted;<sup>1</sup> it is domestic in its character, and confined within the limits of the United States;<sup>2</sup> its exercise is limited to authors and inventors,<sup>3</sup> and their rights are to be secured for only a limited time.<sup>4</sup> Congress may confer a new and extended term upon the patentee even after the expiration of the first,<sup>5</sup> and may reserve the rights and privileges of assignees.<sup>6</sup> There is no constitutional restriction on Congress to exercise this power by making special grants; this is a mere question of expediency.<sup>7</sup> The power of legislation is exclusive in Congress,<sup>8</sup> and State; cannot punish frauds done under color of rights held from the United States.<sup>9</sup> See Supplement, *post*, 300.

1 *Evans v. Jordan*, 9 Cranch, 199; 1 Brock. 243; *Jordan v. Dobson*, 4 Fish. 232; *Blanchard v. Sprague*, 3 Sum. 535; 2 Story, 164.

2 *Browne v. Duchesne*, 19 How. 183; 2 Curt. 371.

3 *Livingston v. Van Ingen*, 9 Johns. 507.

4 *Livingston v. Van Ingen*, 9 Johns. 509.

5 *Bloomer v. Stolley*, 5 McLean, 153; *Blanchard's G. S. Fact. v. Warner*, 1 Blatchf. 253; *Evans v. Robinson*, 1 Caro. L. R. 203; *Jordan v. Dobson*, 4 Fish. 232; *Blanchard v. Haynes*, 6 West. L. J. 82.

6 *Blanchard's G. S. Fact. v. Warner*, 1 Blatchf. 253.

7 *Bloomer v. Stolley*, 5 McLean, 153.

8 *Cranson v. Smith*, 37 Mich. 303; *State v. Lockwood*, 43 Wis. 403.

9 *Cranson v. Smith*, 37 Mich. 309.

**Copyrights.**—All authors may obtain copyrights for their books, maps, pictures, and everything printed and first published in the United States,<sup>1</sup> but they have no exclusive property in a published work except under some act of Congress.<sup>2</sup> The power of Congress cannot be extended to the introduction of new works or inventions,<sup>3</sup> nor does this provision apply to trade-marks,<sup>4</sup> on which Congress is not authorized to legislate under this clause of the Constitution,<sup>5</sup> nor does it authorize the protection of a composition which is grossly indecent and tends to corrupt the morals of the people.<sup>6</sup> This provision does not prevent a State from legislating on the same subject in the absence of congressional legislation,<sup>7</sup> but no State can in any form interfere with the right of private persons under the copyright laws of the United States.<sup>8</sup>

See supplement, *post*, 300.



1 *Wheaton v. Peters*, 8 Peters, 591; *Jollie v. Jaques*, 1 Blatchf. 618; *Clayton v. Stone*, 2 Paine, 233; *Binns v. Woodruff*, 4 Wash. C. C. 48.

2 *Wheaton v. Peters*, 8 Peters, 591; *Dudley v. Mayhew*, 3 N. Y. 12.

3 *Livingston v. Van Ingen*, 9 Johns. 507.

4 *Rodgers v. Phelps*, 1 Off. Gaz. 31; *Leidersdorf v. Flint*, 13 Am. L. Rev. 392. *Contra*, *McLean v. Fleming*, 6 Am. L. Rep. 233.

5 *Leidersdorf v. Flint*, 13 Am. L. Rev. 392. And see *Duwell v. Bohmer*, 10 Chic. L. N. 356.

6 *Martinetti v. Maguire*, Deady, 216; 1 Abb. U. S. 356.

7 *Passenger Cases*, 7 How. 365; *Moore v. People*, 14 How. 20; *Briggs v. Johnson* Co. 4 Dill. 151; *Livingston v. Van Ingen*, 9 Johns. 507.

8 *Little v. Gould*, 2 Blatchf. 165.

**Patent laws.**—Patents are granted to promote the progress of science and the useful arts.<sup>1</sup> The power of Congress on the subject of patents is plenary.<sup>2</sup> The provision contains no restriction as to cases where the invention has not been known or used by the public. All that is required is that it be an invention.<sup>3</sup> Invention implies originality,<sup>4</sup> the finding out, contriving, or creating something which did not exist before.<sup>5</sup> It must be the product of the inventor's mind.<sup>6</sup> If a patent law is constitutional, it must be enforced without regard to the policy or justice which dictated it.<sup>7</sup> A patent for a medicine does not confer on the patentee the right to prescribe it.<sup>8</sup> A patent for a plan for constructing and drawing lotteries does not authorize the establishment of a lottery contrary to State law.<sup>9</sup> If a corporation is the owner of a patent, it is not subject to the provisions of a State law relating to foreign corporations.<sup>10</sup> See Supplement, *post*, 300.

1 *Grant v. Raymond*, 6 Peters, 218; *Hogg v. Emerson*, 6 How. 436; *Brooks v. Fish*, 15 How. 223; *Blanchard v. Sprague*, 3 Sum. 535.

2 *Evans v. Eaton*, 3 Wheat. 454; 7 Wheat. 353; *Evans v. Hattich*, 7 Wheat. 453; *McClurg v. Kingsland*, 1 How. 202; *Blanchard v. Sprague*, 3 Sum. 541.

3 *Evans v. Jordan*, 9 Cranch, 199; 1 Brock. 248; *Jordan v. Dobson*, 4 Fish. 232; *Blanchard v. Sprague*, 2 Story, 164; 3 Sum. 535.

4 *Blake v. Stafford*, 3 Fish. 305.

5 *Ransom v. Mayor of N. Y.* 1 Fish. 264; *Conover v. Roach*, 4 Fish. 16.

6 *Pitts v. Hall*, 2 Blatchf. 234.

7 *Bloomer v. Stolley*, 5 McLean, 158.

8 *Jordan v. Dayton*, 4 Ohio, 294.

9 *Vannini v. Paine*, 1 Harring. 65.

10 *Grover & B. S. M. Co. v. Butler*, 53 Ind. 454; *Mowing Mach. Co. v. Caldwell*, 54 Ind. 270.

**Rights secured.**—The word “secure” does not mean the protection of an acknowledged right.<sup>1</sup> The right of property in an invention or discovery does not imply the unlimited power of using it; this is subject to the regulation and control of the several States.<sup>2</sup> So, the State may regulate the sale of an article that is dangerous, manufactured in pursuance of a patented invention;<sup>3</sup> but if the patentee complies with the laws of Congress, an act of the State legislature which attempts to direct the manner in which patent rights shall be sold, is void.<sup>4</sup>

1 *Wheaton v. Peters*, 8 Peters, 591.

2 *Livingston v. Van Ingen*, 9 Johns. 507; 1 Paine, 45; 4 Hall L. J. 56.

3 *Patterson v. Commonwealth*, 11 Bush, 311.

4 *Crittenden v. White*, 9 Ch. L. 110; *Ex parte Robinson*, 4 Fish. 186; *Hollida v. Hunt*, 70 Ill. 109; *Helm v. First Nat. Bank*, 43 Ind. 167.

See Supplement, *post*, 300.

*9 To constitute tribunals inferior to the Supreme Court;*

**The United States courts** are distinct and independent of each other.<sup>1</sup> The power to establish courts and endow them with jurisdiction affords no pretext for the abrogation of any established rule of property;<sup>2</sup> hence the decision of the supreme court of a State as a rule of property is binding on the courts of the United States.<sup>3</sup>

1 *Taylor v. Carryl*, 20 How. 583.

2 *Suydam v. Williamson*, 24 How. 433.

3 *Jackson v. Chew*, 12 Wheat. 162; *Beauregard v. N. O.* 18 How. 497; *Arguello v. U. S.* 539; *League v. Egery*, 24 How. 366.

See Supplement, *post*, 301.

*10 To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;*

**Congress** need not define in terms the offense of piracy. It may be left to judicial interpretation.<sup>1</sup> To define is to enumerate the crimes which shall constitute piracy.<sup>2</sup> Piracy is an offense against all nations, and against the United States as well.<sup>3</sup> Robbery or forcible depredations on the sea, *animus furandi*, is piracy.<sup>4</sup> “High seas” are not only waters of the ocean, but waters on the sea-coast below low-water mark, whether within territorial boundaries or not.<sup>5</sup> The slave trade is not piracy under the law of nations.<sup>6</sup> Congress may punish for attempt to commit mutiny,<sup>7</sup> or for a conspiracy to burn a ship.<sup>8</sup>

1 *U. S. v. Smith*, 5 Wheat. 153; *U. S. v. Pirates*, *Ibid.* 184.

2 *U. S. v. Smith*, 5 Wheat. 153.

3 *Case of Jose Ferreira dos Santos*, 2 Brock. 507.

4 *U. S. v. Smith*, 5 Wheat. 153; *U. S. v. Palmer*, 3 Wheat. 610.

<sup>5</sup> U. S. *v.* Pirates, 5 Wheat. 184; U. S. *v.* Wiltberger, 5 Wheat. 76; *Waring v. Clarke*, 5 How. 441; *Howard v. Ingersoll*, 13 How. 381; U. S. *v.* Grush, 5 Mason, 290; *The Harriet*, 1 Story, 259; *Jones v. Root*, 6 Mass. 435.

<sup>6</sup> *The Antelope*, 10 Wheat. 66.

<sup>7</sup> U. S. *v.* Crawford, 1 N. Y. Leg. Obs. 288.

<sup>8</sup> U. S. *v.* Cole, 5 McLean, 513.

<sup>11</sup>*To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;*

War is that state in which a nation prosecutes its rights by force.<sup>1</sup> Civil war exists when the regular course of justice is interrupted by revolt, rebellion, or insurrection.<sup>2</sup> "To declare" may be as well by a formal recognition as by a declaration in advance.<sup>3</sup> Congress alone has the power to declare war.<sup>4</sup> The power to declare war involves the power to prosecute it<sup>5</sup> by all means and in any manner in which war may be legitimately prosecuted, including the power to confiscate the property of public enemies,<sup>6</sup> and the power to make legal treasury notes a legal tender for public and private debts,<sup>7</sup> and the power to acquire territory, either by conquest or by treaty;<sup>8</sup> but a war declared by Congress can never be presumed to be waged for the purposes of conquest or the acquisition of territory.<sup>9</sup> So, a declaration of war does not of itself enact a confiscation of the property of an enemy within the territory of the belligerent.<sup>10</sup> Congress alone has the power to confiscate the property of an enemy and debts due to an enemy.<sup>11</sup> The power to declare war includes the power to call the requisite force into service,<sup>12</sup> and the authority to transport troops through all parts of the Union by the most expeditious routes.<sup>13</sup> It is not limited to victories in the field and dispersion of the enemy, but carries with it the power to guard against the renewal of the conflict, and to remedy evils arising from its rise and progress.<sup>14</sup> It extends to all legislation necessary to the prosecution of the war with vigor and success, as suspending the writ of *habeas corpus*,<sup>15</sup> or imposing such conditions upon commercial intercourse in time of war as it sees fit, and making a payment for a license a part of the conditions,<sup>16</sup> or creating non-intercourse acts,<sup>17</sup> or permitting limited commercial intercourse with the enemy.<sup>18</sup> So, an act of Congress emancipating the slaves of those who aid in a rebellion, is valid.<sup>19</sup> Congress may pass an act suspending the Statute of Limitations during the existence of a rebellion.<sup>20</sup> The power to declare war includes the authority to use other means besides those indicated

by its terms.<sup>21</sup> War declared by Congress is not the only war within the contemplation of the Constitution.<sup>22</sup> The power to make rules concerning captures extends to captures within the United States as well as to those that are extra-territorial.<sup>23</sup> Until Congress passes laws on the subject of war and reprisals, no private citizen can enforce such rights.<sup>24</sup> A belligerent may, by capture, enforce his authority.<sup>25</sup>

1 Prize Cases, 2 Black, 666.

2 Prize Cases, 2 Black, 667.

3 *Bas v. Tingy*, 4 Dall. 37; *Talbot v. Seaman*, 1 Cranch, 28; *Griswold v. Waddington*, 16 Johns. 449.

4 Prize Cases, 2 Black, 635; *The Tropic Wind*, 24 Law Rep. 144; *Perkins v. Rogers*, 35 Ind. 124.

5 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Legal Tender Cases*, 12 Wall. 457; *Kneedler v. Lane*, 45 Pa. St. 238.

6 *Miller v. U. S.* 11 Wall. 305; *Tyler v. Defrees*, 11 Wall. 331; *Prize Cases*, 2 Black, 635; *The Ned*, 1 Blatchf. Pr. 119; *Mrs. Alexander's Cotton*, 2 Wall. 404.

7 *Legal Tender Cases*, 12 Wall. 457; *Dooley v. Smith*, 13 Wall. 604; *Railroad Co. v. Johnson*, 15 Wall. 195; *Lick v. Faulkner*, 25 Cal. 404; *Curlac v. Abadie*, *Ibid.* 502; *Kierski v. Matthews*, *Ibid.* 591; *Jones v. Harker*, 37 Ga. 503; *Black v. Lusk*, 69 Ill. 70; *Hague v. Powers*, 39 Barb. 427; *Reynolds v. Bank*, 18 Ind. 467; *Thayer v. Hedges*, 23 Ind. 141; *Hint-rager v. Bates*, 18 Iowa, 174; *George v. Concord*, 45 N. H. 434; *Shollenberger v. Brinton*, 52 Pa. St. 9.

8 *Sere v. Pitot*, 6 Cranch, 332; *Amer. Ins. Co. v. Canter*, 1 Peters, 542; *Fleming v. Page*, 9 How. 303; *Scott v. Sandford*, 19 How. 611.

9 *Fleming v. Page*, 9 How. 603; *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *Stewart v. Kahn*, 11 Wall. 507.

10 *Brown v. U. S.* 8 Cranch, 153.

11 *Brown v. U. S.* 8 Cranch, 153; *Britton v. Butler*, 9 Blatchf. 456.

12 *Kneedler v. Lane*, 45 Pa. St. 238.

13 *Crandall v. Nevada*, 6 Wall. 36.

14 *Stewart v. Kahn*, 11 Wall. 493; *White v. Hart*, 13 Wall. 646; 39 Ga. 306.

15 *Ex parte Milligan*, 4 Wall. 139.

16 *Hamilton v. Dillon*, 21 Wall. 73.

17 *Phelps v. Sowles*, 19 Wend. 547.

18 *Hamilton v. Dillon*, 21 Wall. 73.

19 *Bule v. Parker*, 63 N. C. 131; *Jacoway v. Denton*, 25 Ark. 625.

20 *Stewart v. Kahn*, 11 Wall. 507.

21 Prize Cases, 2 Black, 670.

22 *The Tropic Wind*, 24 Law Rep. 144.

23 *Brown v. U. S.* 8 Cranch, 153.

24 *Brown v. U. S.* 8 Cranch, 153.

25 *Lamar v. Browne*, 92 U. S. 187.

<sup>12</sup> *To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;*

The power to "raise and support armies" includes all the means by which armies can be raised, by compulsory draft as well as by voluntary enlistment.<sup>1</sup> Each individual can be required to perform military duty without his consent if the demand is made by a proper exercise of the national will;<sup>2</sup> and Congress may enact that a person shall be deemed in the military service from the time of the draft.<sup>3</sup> In authorizing a national conscription, the Constitution ignores the State governments, and any aid rendered by them would be simply as volunteers,<sup>4</sup> the power to raise and support armies being exclusive in Congress;<sup>5</sup> but where an act of Congress provides for a draft of men into the army a State may give a bounty to those who volunteer.<sup>6</sup> Congress may make such orders and regulations as may be necessary to prevent an evasion of duty by those liable to military service.<sup>7</sup> The State power over the militia is subordinate to the power of Congress to raise armies out of the population that constitutes it.<sup>8</sup> Congress has a constitutional power to enlist minors in the army and navy without the consent of their parents,<sup>9</sup> and State courts cannot discharge from enlistments under *habeas corpus*,<sup>10</sup> but State courts may discharge on *habeas corpus* persons enlisted contrary to acts of Congress.<sup>11</sup> This constitutional power includes the power to provide necessary officers, equipments, and supplies, and to establish military academies.<sup>12</sup>

1 *Kneedler v. Lane*, 45 Pa. St. 238; *In re Griner*, 23 Wis. 423. And see *Ex parte Coupland*, 26 Tex. 386.

2 *U. S. v. Bainbridge*, 1 Mason. 71; *Ex parte Coupland*, 26 Tex. 394.

3 *Kneedler v. Lane*, 45 Pa. St. 238.

4 *Booth v. Woodbury*, 32 Conn. 118.

5 *Ferguson v. Landram*, 1 Bush, 548.

6 *Booth v. Woodbury*, 32 Conn. 118; *Taylor v. Thompson*, 42 Ga. 9; *Coffman v. Keightly*, 24 Ind. 509; *Board v. Bearse*, 25 Ind. 110; *Winchester v. Corinna*, 55 Me. 9; *Wilson v. Burkman*, 13 Minn. 441; *Comer v. Folsom*, 13 Minn. 219; *State v. Demarest*, 32 N. J. 528; *State v. Jackson*, 31 N. J. 189; *Speer v. Directors*, 50 Pa. St. 150; *Ahl v. Gleim*, 52 Pa. St. 324.

7 *Allen v. Colby*, 45 N. H. 544.

8 *Kneedler v. Lane*, 45 Pa. St. 238.

9 *Ex parte Brown*, 5 Cranch C. C. 554; *U. S. v. Stewart*, *Crabbe*, 205; *Commonwealth v. Murray*, 4 Binn. 437; *Commonwealth v. Barker*, 5 Binn. 423; *Case of Roberts*, 2 Hall L. J. 192; *Shirk's Case*, 20 Leg. Int. 260; *U. S. v. Bainbridge*, 1 Mason, 71; *Commonwealth v. Gamble*, 11 Serg. & R. 94. But see *U. S. v. Wright*, 5 Phila. 296; *Henderson's Case*, 59 Leg. Int. 187; *U. S. v. Rhodes*, 10 Abb. U. S. 43.

10 *Tarble's Case*, 13 Wall. 397; *Matter of Farrand*, 1 Abb. U. S. 146; *In re Keeler*, Hemp. 306; *In re Veremaitre*, 9 N. Y. Leg. Obs. 129; *In re Sifford*, 5 Am. Law Reg. 659; *In re McDonald*, 9 Ibid. 661.

11 *In re Dobb*, 9 Am. L. R. 565; *Ex parte McDonald*, Ibid. 662; *In re Wilson*, 18 Leg. Int. 316; *Comm. v. Carter*, 20 Ibid. 21; *In re Henderson*, Ibid. 181; *U. S. v. Wright*, Ibid. 21; *In re Follis*, 19 Leg. Int. 276; *In re McCall*, Ibid. 103; *U. S. v. Taylor*, 20 Leg. Int. 284; *In re Hicks*, 11 Pitts. L. J. 25; *In re Webb*, 10 Pitts. L. J. 106; *Comm. v. Rogers*, Ibid. 178; *In re Barrett*, 12 Pitts. L. J. 90; *In re Stevens*, 24 Law Rep. 205; *Comm. v. Wright*, 3 Grant. 437. *Contra*, *In re Phelan*, 9 Abb. Pr. 286; *Spangle's Case*, 11 Am. L. R. 596; *In re Jordan*, Ibid. 749; *In re Shirk*, 3 Grant. 460.

12 *U. S. v. Rhodes*, 1 Abb. U. S. 50.

N

13 *To provide and maintain a navy;*

**This grant of power authorizes the Government to buy or build vessels of war, man, arm, and prepare them, and to establish naval academies,<sup>1</sup> and to provide for punishment for desertion and other crimes, and make all needful rules for the government of the navy.<sup>2</sup> Public ships of sovereigns are deemed extra-territorial, and not subject to the local jurisdiction.<sup>3</sup>**

1 *U. S. v. Bevans*, 3 Wheat. 337; *U. S. v. Rhodes*, 1 Abb. U. S. 50.

2 *Dynes v. Hoover*, 20 How. 65.

3 *U. S. v. Bevans*, 3 Wheat. 390; *The Exchange*, 7 Cranch, 116.

14 *To make rules for the government and regulation of the land and naval forces.*

**Congress may provide for the trial and punishment of military and naval offenses by courts-martial, without reference to the judicial powers of Government.**

*Dynes v. Hoover*, 20 How. 65; *In re Bogart*, 2 Sawy. 396.

15 *To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;*

**The power to call out the militia is limited to three purposes.<sup>1</sup> Such authority implies no prohibition to employ the army and navy for the same purposes, nor that the militia cannot be used for the suppression of a rebellion as well as an insurrection.<sup>2</sup> This power is a continuation of the powers enumerated, and a subsidiary grant to the power to declare war, maintain armies and navies, and provide for the common defense.<sup>3</sup> The power to repel includes the power to provide against the attempt or danger of invasion;<sup>4</sup> it is to be exercised in sudden emergencies, and under circumstances vital to the exist-**

ence of the Union.<sup>5</sup> The President is the exclusive and final judge whether the exigency has arisen,<sup>6</sup> and Congress may delegate him to call out the militia, and make his decision as to the necessity conclusive.<sup>7</sup> The President may make his request direct to the executive of the State, or by order directed to any subordinate officer of the State militia.<sup>8</sup> Congress may make laws to enforce the call and may inflict penalties for disobedience, and erect courts for the trial of offenders,<sup>9</sup> but cannot subject State militia to martial law unless in the actual service of the Government.<sup>10</sup> It may fix the period at which the militia enter into service of the United States; and change their character from State to National militia.<sup>11</sup> A State may make a law providing for the punishment for neglect to obey an order calling forth the militia.<sup>12</sup> When called out and mustered into the service, they become National militia.<sup>13</sup> The States have concurrent power to call out the militia to aid the General Government,<sup>14</sup> and in certain emergencies to raise troops to suppress insurrection.<sup>15</sup> The authority to suppress rebellion is found in the power to suppress insurrection and carry on war.<sup>16</sup> When a rebellious State is subdued, Congress has the right to determine and fix the conditions of returning peace.<sup>17</sup>

1 Kneedler v. Lane, 45 Pa. St. 233.

2 Texas v. White, 7 Wall. 700; Metropolitan Bank v. Van Dyke, 27 N. Y. 400; Kneedler v. Lane, 45 Pa. St. 233.

3 Kneedler v. Lane, 45 Pa. St. 233.

4 Martin v. Mott, 12 Wheat. 19.

5 Luther v. Borden, 7 How. 18.

6 Martin v. Mott, 12 Wheat. 19; Luther v. Borden, 7 How. 18; Vanderheyden v. Young, 11 Johns. 150; Duffield v. Smith, 3 Serg. & R. 590.

7 Martin v. Mott, 12 Wheat. 19; Luther v. Borden, 7 How. 18.

8 Houston v. Moore, 5 Wheat. 15; 3 Serg. & R. 169.

9 Commonwealth v. Irish, 3 Serg. & R. 176.

10 Mills v. Martin, 19 Johns. 7.

11 Houston v. Moore, 5 Wheat. 15; 3 Serg. & R. 169.

12 Houston v. Moore, 5 Wheat. 15; 3 Serg. & R. 169.

13 Houston v. Moore, 5 Wheat. 15; 3 Serg. & R. 169; Martin v. Mott, 12 Wheat. 19.

14 Houston v. Moore, 5 Wheat. 15; 3 Serg. & R. 169.

15 Luther v. Borden, 7 How. 1.

16 Texas v. White, 7 Wall. 701; Tyler v. Defrees, 11 Wall. 331.

17 Jacoway v. Denton, 25 Ark. 625; Shorter v. Cobb, 39 Ga. 285.

<sup>10</sup> *To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;*

The government of the militia, when in actual service, is distinct from the power of calling them out.<sup>1</sup> Organizing includes the power of determining who shall compose the body of the militia, and the power to fix the age necessary to render competent.<sup>2</sup> After the militia has entered into the service of the United States, the authority of the General Government is exclusive,<sup>3</sup> and so far as Congress has provided for their organization, the power of the State is excluded;<sup>4</sup> but if Congress neglect to exercise this power, States have a concurrent authority to do so,<sup>5</sup> and so long as the militia are acting under the military jurisdiction of the State to which they belong, the powers over them are concurrent in the General and State governments;<sup>6</sup> but the State law is subordinate to the paramount law of the General Government on the same subject.<sup>6</sup> Where a State law is to operate on the militia before they are in actual service, it is valid if it does not conflict with the law of Congress.<sup>6</sup> The power of Congress is unlimited, except in officering and training the militia.<sup>6</sup> The President must exercise his command of the militia through officers duly appointed.<sup>7</sup> See Supplement, *post*, 201.

1 *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169.

2 *Opinions of Justices*, 80 Mass. 548.

3 *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169.

4 *Mills v. Martin*, 19 Johns. 7; *Houston v. Moore*, 5 Wheat. 51; 3 Serg. & R. 169.

5 *Houston v. Moore*, 5 Wheat. 56; 3 Serg. & R. 169; *Luther v. Borden*, 7 How. 1.

6 *Houston v. Moore*, 5 Wheat. 56; 3 Serg. & R. 169.

7 *Opinions of Justices*, 80 Mass. 548.

<sup>17</sup> *To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and*



**District of Columbia.**—The inhabitants of the District of Columbia are citizens of the United States, and may constitutionally have local legislation.<sup>1</sup> Congress legislates for the District of Columbia with the same power as the legislative assemblies of the States,<sup>2</sup> and in its exercise it acts as the legislature of the Union,<sup>3</sup> and the right of exclusive legislation carries with it the right of exclusive jurisdiction<sup>4</sup> in all cases whatsoever, including the power of taxation.<sup>5</sup> The failure of Congress to exercise its power in no way impairs the constitutional grant.<sup>6</sup> This clause may be understood as vesting courts established in the District of Columbia with authority to issue all process necessary to carry its orders into effect.<sup>7</sup> In legislating for the District of Columbia, Congress is bound by the prohibitions of the Constitution.<sup>8</sup> The terms of this section are not limited by the principle that representation is inseparable from taxation; taxes may be levied in proportion to the census directed to be taken by the Constitution.<sup>9</sup> Congress may confer upon the city of Washington the power to assess for the improvement or repair of public streets,<sup>10</sup> or may provide for the construction of an aqueduct drawing its supply of water from the within limits of a State, and the use and occupancy of land for that purpose with permission and consent of such State.<sup>11</sup> The right to exclusive jurisdiction depends upon the contract of cession.<sup>12</sup> When land is purchased by the United States it cannot be sold without special authority of Congress.<sup>13</sup> Jurisdiction and authority are limited to the territory purchased,<sup>14</sup> and in case of retrocession, jurisdiction and authority are lost.<sup>15</sup> This provision is not applicable to the Territories.<sup>16</sup> See Supplement, *post*, 301.

1 U. S. v. Bevens, 3 Wheat. 388.

2 Mattingly v. District of Columbia, 6 Amer. Law Reg. 405.

3 Cohens v. Virginia, 6 Wheat. 424.

4 U. S. v. Coryell, 2 Mason, 91; Anon. 6 Op. Atty. Gen. 577.

5 Loughborough v. Blake, 5 Wheat. 317.

6 Quinn's Case, 12 Int. Rev. Rec. 151.

7 U. S. v. Williams, 4 Cranch C. C. 393.

8 U. S. v. More, 3 Cranch, 160.

9 Loughborough v. Blake, 5 Wheat. 317.

10 Willard v. Presbury, 14 Wall. 676.

11 Reddall v. Bryan, 14 Md. 444.

12 Scott v. Sandford, 19 How. 528.

13 U. S. v. Railroad Br. Co. 6 McLean, 517.

14 People v. Godfrey, 17 Johns. 225.

15 Phillips v. Payne, 92 U. S. 131.

16 Reynolds v. People, 1 Colo. 179.

**Authority over property ceded.**—Property is under the exclusive jurisdiction of the United States when situated in the District of Columbia, or other places ceded to the United States;<sup>1</sup> but the Government may own and use property within the limits of a State without acquiring jurisdiction over the territory.<sup>2</sup> If the United States merely acquires land from the owner, it holds it in subordination to the municipal regulations of the place:<sup>3</sup> the purchase itself does not oust the jurisdiction or sovereignty of such State over the lands so purchased.<sup>4</sup> When the Government holds land otherwise than as sovereign it holds it only as an individual,<sup>5</sup> as where land is rented for a temporary purpose,<sup>6</sup> but free from State taxation.<sup>7</sup> The United States can acquire the right of exclusive legislation within the territorial limits of a State only in the mode pointed out in the Constitution;<sup>8</sup> places for forts, magazines, etc., purchased from individuals, require the consent of the State legislature to give the General Government exclusive jurisdiction.<sup>9</sup> Ratification by the State in addition to purchase is necessary to vest full sovereignty in the United States.<sup>10</sup> The consent of the State is necessary for no other purpose than to vest plenary jurisdiction in the Government, and not to restrict the power of eminent domain.<sup>11</sup> An act of the legislature will not confer such jurisdiction unless there is some act of acceptance on the part of the Government;<sup>12</sup> but after a cession to the United States the State jurisdiction ceases,<sup>13</sup> and the ordinary laws of a State do not prevail within such territory.<sup>14</sup> The Government has exclusive jurisdiction over the ceded territory, although the act of cession provides that civil and criminal process of State courts may be executed within such territory.<sup>15</sup>

1 U. S. v. Ames, 1 Wood. & M. 76; Perry Manuf. Co. v. Brown, 2 Ibid. 468; Anonymous, 9 Opin. Att. Gen. 521.

2 Renner v. Bennett, 21 Ohio St. 431.

3 Commonwealth v. Young, Brightly, 302; U. S. v. Crosby, 7 Cranch, 116.

4 U. S. v. Cornell, 2 Mason, 66; U. S. v. Davis, 5 Ibid. 364; Commonwealth v. Clary, 8 Mass. 72.

5 Commonwealth v. Young, Brightly, 302; People v. Godfrey, 17 Johns. 225; U. S. v. Traver, 2 Wheel. C. C. 490; People v. Lent, Ibid. 548.

6 U. S. v. Tierney, 1 Bond, 571; Renner v. Bennett, 21 Ohio St. 431.

7 U. S. v. Welse, 2 Wall. Jr. 72; Commonwealth v. Clary, 8 Mass. 72; Anonymous, 7 Opin. Att. Gen. 628.

8 U. S. v. Tierney, 1 Bond, 571; People v. Godfrey, 17 Johns. 225; Clay v. State, 4 Kans. 49.

9 McConnell v. Wilcox, 2 Ill. 344.

10 U. S. v. Tierney, 1 Bond, 571; U. S. v. Cornell, 2 Mason, 66; Commonwealth v. Young, Brightly, 302.

- 11 *Ex parte Hebard*, 4 Dill. 384; *U. S. v. Stahl, McCahon*, 206.
- 12 *People v. Lent*, 2 Wheel. C. C. 548.
- 13 *People v. Godfrey*, 17 Johns. 225; *Commonwealth v. Young, Brightly*, 302; *U. S. v. Cornell*, 2 Mason, 66.
- 14 *U. S. v. Bevans*, 3 Wheat. 336; *Cohens v. Virginia*, 6 Wheat. 360; *People v. Godfrey*, 17 Johns. 225; *Commonwealth v. Clary*, 8 Mass. 72; *U. S. v. Ames*, 1 Wood. & M. 84.
- 15 *U. S. v. Cornell*, 2 Mason, 66; *U. S. v. Davis*, 5 *Ibid.* 356; *Commonwealth v. Clary*, 8 Mass. 72; *Mitchell v. Tibbetts*, 34 Mass. 298; *U. S. v. Travers*, 2 Wheel. C. C. 490.

**State authority.**—Except by compact, or the voluntary legislative action of the State, lands within its limits cannot be withdrawn from its ordinary action.<sup>1</sup> The State may continue to regulate and punish so far as they have not delegated the power to the General Government;<sup>2</sup> so as to crimes, over which the State has never parted with its jurisdiction.<sup>3</sup> The State authority over crimes exists till Congress extinguishes it by legislation,<sup>4</sup> but no offenses committed within the limits of territory purchased with the consent of the State can be punished in the State courts.<sup>5</sup> Congress may relinquish jurisdiction over territory acquired from a State without abandoning the use of the property.<sup>6</sup> The authority over purchased sites binds all the United States, and carries with it the right to make that power effectual,<sup>7</sup> and includes the power of taxation.<sup>8</sup> The inhabitants thereon are not citizens or electors of such States,<sup>9</sup> nor are they liable to State taxation on account of such residence.<sup>10</sup> Congress has no exclusive jurisdiction over land in a State purchased by a corporation created by act of Congress.<sup>11</sup> Jurisdiction over forts and military reservations in Wyoming is exclusive in the Federal Government.<sup>12</sup>

- 1 *Lowrey v. Weaver*, 4 McLean, 32.
- 2 *Ex parte Bollman*, 4 Cranch, 75; *Ex parte Watkins*, 3 Peters, 201; *Kendall v. U. S.* 12 Peters, 524; *Pollard v. Hagan*, 3 How. 212.
- 3 *U. S. v. Bevan*, 3 Wheat. 388; *U. S. v. Stahl, McCahon*, 209; *U. S. v. Ames*, 1 Wood. & M. 80; *People v. Godfrey*, 17 Johns. 225; *Clay v. State*, 4 Kan. 49; *Commonwealth v. Clary*, 8 Mass. 75; *U. S. v. Sa-coo-da-cot*, 1 Abb. U. S. 383.
- 4 *In re O'Connor*, 37 Wis. 379; *People v. Lent*, 2 Wheel. C. C. 548.
- 5 *Commonwealth v. Clary*, 8 Mass. 72; *U. S. v. Ames*, 1 Wood. & M. 76.
- 6 *Renner v. Bennett*, 21 Ohio St. 431.
- 7 *Cohens v. Virginia*, 6 Wheat. 224.
- 8 *Loughborough v. Blake*, 5 Wheat. 317.
- 9 *Commonwealth v. Clary*, 8 Mass. 72; *Sinks v. Reese*, 19 Ohio St. 306.
- 10 *Webster v. Seymour*, 8 Vt. 135.
- 11 *In re O'Connor*, 37 Wis. 379.
- 12 *Scott v. U. S.* 1 Wyo. 40; *Brown v. Ilges*, *Ibid.* 202.

*18 To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*

**Incidental powers.**—Necessity is the test of incidental power.<sup>1</sup> This clause is an additional power, and not a restriction on the powers of Congress.<sup>2</sup> The word “necessary” does not mean absolutely necessary, nor does it imply the use of only direct means;<sup>3</sup> “necessary” and “proper” are synonymous,<sup>4</sup> and require that the means should be appropriate;<sup>5</sup> a reasonable construction to the terms should be given.<sup>6</sup> The choice of means to carry the powers of Government into effect is left to Congress, which is allowed a wide discretion, but the means must bear some relation to the fitness of things and to the end to be accomplished.<sup>7</sup> There must be some relation between the means and the end,<sup>8</sup> though the relationship need not be direct and immediate.<sup>9</sup> If there is any relation of the means to the end, the judiciary is limited to the inquiry whether the use of such means is repugnant to any provision of the Constitution.<sup>10</sup> The only limit to the power of Congress in the use of means is that they should be appropriate to the end, and if legitimate they are appropriate.<sup>11</sup> This limitation on the means which may be used is not extended to the powers which are conferred.<sup>12</sup> Construction, for the purpose of conferring a power, should be resorted to with great caution; where they are expressly given, no other or different means can be implied.<sup>13</sup> The Government has the right to employ freely every means, not prohibited, necessary for the fulfillment of its duties, or for its preservation.<sup>14</sup> So, provisions in an act of Congress, when necessary and proper, are constitutional.<sup>15</sup> See Supplement, *post*, 301.

1 *Anderson v. Dunn*, 6 Wheat. 215.

2 *McCulloch v. Maryland*, 4 Wheat. 316; *U. S. v. Fisher*, 2 Cranch, 358; *Anderson v. Dunn*, 6 Wheat. 215; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Commonwealth v. Morrison*, 2 A. K. Marsh. 75; *U. S. v. Marigold*, 9 How. 560; *Mitchell v. Steelman*, 8 Cal. 363; *Dickey v. Turnpike Co.* 7 Dana, 113.

3 *McCulloch v. Maryland*, 4 Wheat. 316; *U. S. v. Fisher*, 2 Cranch, 358; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Commonwealth v. Lewis*, 6 Binn. 270.

4 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

5 *McCulloch v. Maryland*, 4 Wheat. 316.

6 *Martin v. Hunter*, 1 Wheat. 326; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Commonwealth v. Morrison*, 2 A. K. Marsh. 75.

7 *Fisher v. Blight*, 2 Cranch, 396; *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 73; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *U. S. v. Marigold*, 9 How. 560; *Lick v. Faulkner*, 25 Cal. 404.

8 Legal Tender Cases, 12 Wall. 457.

9 Legal Tender Cases, 12 Wall. 457. But see *U. S. v. Bailey*, 1 McLean, 234.

10 Metropolitan Bank *v.* Van Dyck, 27 N. Y. 400.

11 *U. S. v. Rhodes*, 1 Abb. U. S. 49; *U. S. v. Fox*, 6 Am. L. Rep. 188, 241.

12 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 484; 4 Johns. Ch. 150, 175.

13 *Ex parte Beavins*, 33 N. H. 89.

14 Legal Tender Cases, 12 Wall. 457.

15 *U. S. v. Pusey*, 6 Bank. Reg. 285.

**Enumeration of means.**—The Constitution does not profess to enumerate the means by which the power it confers may be executed.<sup>1</sup> If the means are appropriate the necessity is to be determined by Congress alone.<sup>2</sup> If the Constitution guarantees a right, the National Government is clothed with authority to enforce it.<sup>3</sup> It is not limited by the express powers granted, but means are given by just and necessary implication.<sup>4</sup> One method of enforcement may be applicable to one fundamental right, but not to another.<sup>5</sup> A wide discretion to determine what is necessary was left to Congress.<sup>6</sup> The instruments of government are its officers—executive, legislative, and judicial—and public buildings occupied for the use of government.<sup>7</sup> The power of creating a corporation is an incident to the powers expressly given.<sup>8</sup> Congress may make or authorize contracts for services.<sup>9</sup> The power to prescribe an oath of office is an incidental power.<sup>10</sup> Congress may make the United States a preferred creditor in cases of insolvency,<sup>11</sup> or may exempt from State taxation the means employed by Government in the exercise of its powers,<sup>12</sup> as national securities,<sup>13</sup> or on salaries of public officers,<sup>14</sup> or it may levy a tax on State bank-notes in circulation,<sup>15</sup> or it may provide for punishment of offenses which obstruct or prevent commerce,<sup>16</sup> or for bringing into the country counterfeit foreign coins,<sup>17</sup> or it may secure the receipt of pensions free from unreasonable tolls and exactions.<sup>18</sup> See Supplement, *post*, 301.

1 *McCulloch v. Md.* 4 Wheat. 316.

2 *McCulloch v. Md.* 4 Wheat. 316; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

3 *Prigg v. Commonwealth*, 16 Peters, 539; *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308.

4 *Prigg v. Commonwealth*, 16 Peters, 539; *Henry v. Lowell*, 16 Barb. 268.

5 *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308.

6 Legal Tender Cases, 12 Wall. 534; *Low v. Centr. Pac. R. R. Co.* 51 Cal. 63.

7 *Sweatt v. Boston &c. R. R. Co.* 5 Bank. Reg. 249.

8 *McCulloch v. Maryland*, 4 Wheat. 316; *Magill v. Parsons*, 4 Conn. 317. But see *Commonwealth v. Morrison*, 2 A. K. Marsh. 75.

9 *Thompson v. Pacific R. R. Co.* 9 Wall. 579; *U. S. v. Maurice*, 2 Brock, 96.

10 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

11 *U. S. v. Flsher*, 2 Cranch, 358.

12 *Weston v. Charleston*, 2 Peters, 449; *Thompson v. Pac. R. R. Co.* 9 Wall. 579; *Bank of Commerce v. Tax Commissioners*, 2 Black, 620.

13 *Bank of Commerce v. Tax Commrs.* 2 Black, 620; *Sweatt v. Boston &c. R. R. Co.* 5 Bank. Reg. 249.

14 *Sweatt v. Boston &c. R. R. Co.* 5 Bank. Reg. 249.

15 *Legal Tender Cases*, 12 Wall. 543; *Veazie Bank v. Fenno*, 8 Wall. 533.

16 *U. S. v. Coombs*, 12 Peters, 78.

17 *U. S. v. Marigold*, 9 How. 560.

18 *U. S. v. Fairchilds*, 1 Abb. U. S. 74; *U. S. v. Marks*, 2 Abb. U. S. 541.

**Enumeration of means.**—Any law not prohibited, and in any degree a means conducive to the execution of any or all of the powers of Congress, comes within this clause, as a law creating a national bank,<sup>1</sup> or a law fixing the rate of interest to be charged by such banks,<sup>2</sup> or prescribing a penalty for taking usurious interest,<sup>3</sup> or making provisions which tend to promote the efficiency of such banks,<sup>4</sup> as by providing for the safety of remittances by bills or otherwise.<sup>5</sup> If it be necessary to render treasury notes a legal tender for all debts, it may do so.<sup>6</sup> Congress may use all known and appropriate means for effectually collecting and disbursing the revenue,<sup>7</sup> or to protect revenue collectors, men in postal service, etc.,<sup>8</sup> and in case of the death of the collector to provide that the Government shall be first paid out of his estate.<sup>9</sup> So, Congress has power to create, define, and punish crimes or offenses when necessary for effectuating the objects of government.<sup>10</sup> The power to punish is incidental to constitutional powers of sovereignty.<sup>11</sup> Congress may make laws for carrying into execution all the judgments which the judicial department has power to pronounce;<sup>12</sup> or may regulate proceedings on execution;<sup>13</sup> or may delegate to courts the power of altering the proceedings;<sup>14</sup> or it may prescribe a limitation for actions for damages done under the authority of the President.<sup>15</sup> When a Territory becomes a State, Congress may designate the court to which records shall be transferred, and how judgments shall be enforced and reviewed.<sup>16</sup> See Supplement, *post*, 301.

<sup>1</sup> *Osborn v. Bank of U. S.* 9 Wheat. 733; *McCulloch v. Md.* 4 Wheat. 316; *Metropolitan Bk. v. Van Dyck*, 27 N. J. 400.

<sup>2</sup> *Central Bk. v. Pratt*, 115 Mass. 439.

3 First Nat. Bk. v. Garlinghouse, 22 Ohio St. 492; Centr. Nat. Bk. v. Pratt, 115 Mass. 546; Farmers' Nat. Bank v. Dearing, 91 U. S. 29. *Contra*, First Nat. Bk. v. Lamb, 50 N. Y. 659.

4 Chesapeake Bk. v. First Nat. Bk. 40 Md. 269.

5 U. S. v. Fisher, 2 Cranch, 358; 1 Wash. C. C. 4.

6 Legal Tender Cases, 12 Wall. 539; Metropolitan Bk. v. Van Dyck, 27 N. Y. 400; U. S. v. Fisher, 2 Cranch, 358; 1 Wash. C. C. 4. On contracts made before its passage as well as after, Legal Tender Cases, 12 Wall. 538, overruling Hepburn v. Griswold, 8 Wall. 603.

7 Murray v. Hoboken &c. Co. 18 How. 272; Sweatt v. Boston H. & E. R. R. Co. 5 Bank Reg. 249.

8 Dugan v. U. S. 3 Wheat. 179; U. S. v. Bevans, Ibid. 388; The Exchange, 7 Cranch, 116; 2 Peters, 439; Osborn v. Bk. of U. S. 9 Wheat. 366; U. S. v. Tingey, 5 Peters, 115.

9 Commonwealth v. Lewis, 6 Binn. 266.

10 U. S. v. Worrall, 2 Dall. 384; U. S. v. Marigold, 9 How. 560.

11 McCulloch v. Maryland, 4 Wheat. 316.

12 Bk. of U. S. v. Halstead, 10 Wheat. 51.

13 Bk. of U. S. v. Halstead, 10 Wheat. 51.

14 Wayman v. Southard, 10 Wheat. 1; Bk. of U. S. v. Halstead, 10 Wheat. 51.

15 Mulligan v. Hovey, 3 Biss. 13.

16 Hunt v. Paloa, 4 How. 589.

## SECTION 9.

### *Limitation of the powers of Congress.*

1. Migration or importation of persons.
2. *Habeas corpus* not to be suspended.
3. Attainder and *ex post facto* laws prohibited.
4. Capitation and direct taxes.
5. Taxation on exports.
6. Commercial regulations.
7. Public moneys and accounts.
8. Titles of nobility. Presents, offices, etc.

**Sec. 9.** <sup>1</sup>*The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

**This section** has no application to State governments.<sup>1</sup> It is a limitation on the powers of the General Government, rather than a grant of power,<sup>2</sup> as the possession of this power during a limited time cannot be admitted to apply to the possession of any other power.<sup>3</sup> Migration applies to voluntary as well as to involuntary arrivals.<sup>4</sup> Passengers can never be subject to State laws until they become a portion of the population of the State.<sup>5</sup>

As to the legislation by Congress after the period designated, see.<sup>6</sup> Exclusive power is vested in Congress since January 1st, 1808.<sup>7</sup> See Supplement, *post*, 302.

1 *Butler v. Hopper*, 1 Wash. C. C. 499.

2 *Passenger Cases*, 7 How. 541; 45 Mass. 282; *Wilson v. U. S.* 1 Brock. 423; *Butler v. Hopper*, 1 Wash. C. C. 499; *U. S. v. Libby*, 1 Wood. & M. 235.

3 *Gibbons v. Ogden*, 9 Wheat. 230.

4 *Gibbons v. Ogden*, 9 Wheat. 230.

5 *Passenger Cases*, 7 How. 283; 45 Mass. 282.

6 *U. S. v. Preston*, 3 Peters, 65.

7 *Savory v. Caroline*, 20 Ala. 19.

<sup>2</sup> *The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.*

**The privilege of the writ shall not be suspended, that is, the privilege of having it issued, and the case heard and determined;**<sup>1</sup> the writ means, the writ *ad subjiciendum*.<sup>2</sup> It is a writ of right,<sup>3</sup> the privilege of having judicial inquiry made into the cause of imprisonment, and a suspension precludes all further proceedings on a writ issued.<sup>4</sup> The privilege of the writ can only be suspended by act of Congress.<sup>5</sup> The power is given to Congress to suspend the writ in cases of rebellion or invasion, and Congress is the exclusive judge of when the exigency arises.<sup>6</sup> The President cannot suspend the writ, but may be authorized by act of Congress to do so.<sup>7</sup> A statute authorizing the President to suspend the writ, when in his judgment the public safety requires it, is valid.<sup>8</sup> The Secretary of War has no authority to suspend the privilege of the writ,<sup>9</sup> nor can the commander of a military district.<sup>10</sup> There is a distinction between the suspension of the writ and the *ipso facto* suspension which takes place wherever martial law actually exists.<sup>11</sup> Congress has no power to suspend the issuing of the writ by a State court,<sup>12</sup> but it may provide that an officer shall not be liable for an arrest made during the suspension of the privilege of the writ.<sup>13</sup> The suspension of the privilege of the writ is an express permission and direction from Congress to arrest or imprison all persons who may be dangerous to the common weal;<sup>14</sup> it simply denies to one arrested the privilege to obtain his liberty;<sup>15</sup> it does not suspend the duty to issue the writ,<sup>16</sup> but upon its return it will be dismissed without inquiry into the validity of the arrest.<sup>17</sup> Courts will take judicial notice of the close of the Rebellion, and with



it the end of the suspension of the writ.<sup>18</sup> If the term *habeas corpus* had a well-known meaning, the Convention had reference to that meaning in framing the Constitution.<sup>19</sup>

1 *Macready v. Wilcox*, 33 Conn. 321.

2 *The Santissima Trinidad*, 7 Wheat. 305; *Martin v. Mott*, 12 Wheat. 29; *Luther v. Borden*, 7 How. 1; *Fleming v. Page*, 9 How. 615; *Cross v. Harrison*, 10 How. 189.

3 *Yates v. Lansing*, 5 Johns. 282.

4 *Ex parte Fagan*, 2 Sprague, 91; *Ex parte Dunn*, 25 How. Pr. 467.

5 *Ex parte Bollman*, 4 Cranch, 75; *Ex parte Merryman*, Taney, 267; 24 Law Rep. 78; *Jones v. Seward*, 3 Grant, 431; *Griffin v. Wilcox*, 21 Ind. 370; *In re Kemp*, 16 Wis. 350. But see *McQuillan's Case*, 9 Pitts. L. Int. 27; 27 Law Rep. 129; *Ex parte Field*, 5 Blatchf. 82.

6 *Martin v. Mott*, 12 Wheat. 19; *Ex parte Merryman*, Taney, 246; 24 Law Rep. 78; *McCall v. McDowell*, Deady, 233; 1 Abb. U. S. 212; *Ex parte Milligan*, 4 Wall. 115.

7 *Ex parte Milligan*, 4 Wall. 114.

8 *McCall v. McDowell*, Deady, 233; 1 Abb. U. S. 212; *In re Oliver*, 17 Wis. 681.

9 *Ex parte Field*, 5 Blatchf. 63.

10 *Ex parte Field*, 5 Blatchf. 63; *Johnson v. Duncan*, 3 Mart. 530.

11 *In re Kemp*, 16 Wis. 359.

12 *Griffin v. Wilcox*, 21 Ind. 370; *Kneedler v. Lane*, 45 Pa. St. 238.

13 *McCall v. McDowell*, Deady, 233; 1 Abb. U. S. 212.

14 *McCall v. McDowell*, Deady, 233; 1 Abb. U. S. 212.

15 *Ex parte Milligan*, 4 Wall. 115.

16 *Ex parte Milligan*, 4 Wall. 130.

17 *Kulp v. Ricketts*, 3 Grant, 420; *Vallandigham's Trial*, 259; 1 Wall. 243.

18 *Cozzens v. Frink*, 13 Am. L. R. 700.

19 *Calder v. Bull*, 3 Wall. 386; *Watson v. Mercer*, 8 Peters, 88; *Carpenter v. Pennsylvania*, 17 How. 456; *U. S. v. Wilson*, 7 Peters, 150; *U. S. v. Harris*, 1 Abb. U. S. 115.

<sup>3</sup> *No bill of attainder or ex post facto law shall be passed.*

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.<sup>1</sup> It may inflict the punishment absolutely or conditionally.<sup>2</sup> If the terms "bill of attainder" and "*ex post facto*" had a well-known meaning at the time of framing the Constitution, the Convention had reference to that meaning.<sup>3</sup> A constitution requiring expurgation by a provision for a stringent test-oath, is a bill of attainder.<sup>4</sup> So, a provision in a statute for a stringent test-oath, operating the exclusion from any profession or avocation of life for past conduct, is a punishment for such conduct, and partakes of the nature

of a bill of pains and penalties, and subject to the constitutional inhibition<sup>5</sup> as a law excluding from practice attorneys at law who participated in the late Rebellion.<sup>6</sup> A bill of attainder may affect the life of an individual, or may confiscate his property, or both.<sup>7</sup> A statute which makes the non-payment of taxes evidence of participation in rebellion and forfeits the land absolutely, is a bill of attainder;<sup>8</sup> but not a statute providing for a forfeiture for a violation of the revenue law;<sup>9</sup> nor a statute imposing a forfeiture of citizenship for continuance of desertion after proclamation and trial by court-martial to enforce the penalty.<sup>10</sup> A provision exempting an officer from action for acts done by order of lawful military superiors is not a bill of attainder.<sup>11</sup>

1 *Cummings v. Missouri*, 4 Wall. 277; *Ex parte Garland*, *Ibid.* 333; *In re De Giacomo*, 12 Blatchf. 401.

2 *Gaines v. Buford*, 1 Dana, 510.

3 *U. S. v. Harris*, 1 Abb. U. S. 115; *Calder v. Bull*, 3 Dall. 386; *U. S. v. Wilson*, 7 Peters, 150; *Watson v. Mercer*, 8 Peters, 88; *Carpenter v. Pennsylvania*, 17 How. 456.

4 *Cummings v. Missouri*, 4 Wall. 277.

5 *Ex parte Garland*, 4 Wall. 333; *Pierce v. Carskadon*, 16 Wall. 234; *Cummings v. Missouri*, 4 Wall. 320; *Kluger v. Missouri*, 13 Wall. 257.

6 *Ex parte Garland*, 4 Wall. 333.

7 *Fletcher v. Peck*, 6 Cranch, 138.

8 *Martin v. Snowden*, 18 Gratt. 100.

9 *U. S. v. A Distillery*, 2 Abb. U. S. 192.

10 *Gotchens v. Matheson*, 40 How. Pr. 97; 58 Barb. 152.

11 *Drehman v. Steffe*, 8 Wall. 595.

**Ex post facto laws.** — Every law which makes an act innocent before the law a crime, and punishes, or that aggravates a crime, and makes it greater than it was when committed; or that enhances the punishment, or that provides for less evidence for conviction, is an *ex post facto* law;<sup>1</sup> so, a statute which attempts to validate a punishment which would otherwise be illegal is an *ex post facto* law;<sup>2</sup> so, a statute excluding a person from the practice of his profession for acts committed prior to the passage thereof is an *ex post facto* law.<sup>3</sup> But a statute making treasury notes a legal tender is not an *ex post facto* law;<sup>4</sup> nor a statute which imposes forfeiture of citizenship for continuance of desertion after assurance of pardon;<sup>5</sup> nor a treaty for extradition of criminals, although it provides for crimes antecedently committed.<sup>6</sup> This provision applies only to criminal laws.<sup>7</sup> An act of Congress protecting from civil process persons amenable to prosecution is not unconstitutional.<sup>8</sup> See Supplement, *post*, 302.

1 *Calder v. Bull*, 3 Dall. 390; *Fletcher v. Peck*, 6 Cranch, 87; *Cummings v. Missouri*, 4 Wall. 277; *Shepherd v. People*, 25 N. Y. 406; *Lapeyre v. U. S.* 17 Wall. 206; *Carpenter v. Pennsylvania*, 17 How. 563.

2 *In re Murphy*, 1 Woolw. 141.

3 *Ex parte Garland*, 4 Wall. 333; *Ex parte Law*, 35 Ga. 285; *Ex parte Baxter*, 14 Am. L. Reg. 159.

4 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

5 *Gotchens v. Matheon*, 40 How. Pr. 97; 58 Barb. 152.

6 *Ex parte De Giacomo*, 12 Blatchf. 301.

7 *Calder v. Bull*, 3 Dall. 390; *Fletcher v. Peck*, 6 Cranch, 87; *Ogden v. Saunders*, 12 Wheat. 213; *Satterlee v. Matthewson*, 2 Peters, 380; *Watson v. Mercer*, 8 Peters, 110; *Carpenter v. Pennsylvania*, 17 How. 463; *Ex parte Garland*, 4 Wall. 333; *Locke v. New Orleans*, 4 Wall. 172; *Society for Prop. of Gosp. v. Wheeler*, 2 Gall. 105; *U. S. v. Hall*, 6 Cranch, 171; 2 Wash. C. C. 366; *Commonwealth v. Lewis*, 6 Blinn. 271; *U. S. v. Hughes*, 21 Int. Rev. Rec. 84; *Thompson v. Alger*, 12 Met. 428; *McCormick v. Pickering*, 4 N. Y. 276; *Baughner v. Nelson*, 9 Ga. 299; *Bridgeport v. Hubbell*, 5 Conn. 240.

8 *In re Murphy*, Woolw. 146.

See Art. I, Sec. 10, (1) and note.

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*4 No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.*

A capitation tax is a direct tax,<sup>1</sup> "direct taxes" comprehending only capitation taxes and taxes on lands, and perhaps taxes on personal property by general valuation and assessment.<sup>2</sup> A tax on income is not a capitation or other direct tax.<sup>3</sup> A tax on bank circulation is not a direct tax,<sup>4</sup> nor a tax on the business of an insurance company,<sup>5</sup> nor a tax on carriages kept for private use.<sup>6</sup> Direct taxes must be laid by the rule of apportionment.<sup>7</sup> See Supplement, *post*, 302.

1 *Hylton v. U. S.* 3 Dall. 171.

2 *Veazie Bank v. Fenno*, 8 Wall. 533; *Loughborough v. Blake*, 5 Wheat. 317; *Hylton v. U. S.* 3 Dall. 171.

3 *Clark v. Sichel*, 14 Int. Rev. Rec. 6; *Smedberry v. Bentley*, 21 Ibid.

4 *Veazie Bank v. Fenno*, 8 Wall. 533.

5 *Pacific Ins. Co. v. Soule*, 7 Wall. 433.

6 *Hylton v. U. S.* 3 Dall. 171.

7 *License Tax Cases*, 5 Wall. 471.

See Article I, Sec. 2, (3).

*<sup>b</sup> No tax or duty shall be laid on articles exported from any State.*

**The power of Congress** to interfere with exports is taken away by this provision.<sup>1</sup> A charge for a stamp on a package of tobacco intended for export, made as a means to prevent fraud, is not a tax on exports.<sup>2</sup> A statute regulating commercial intercourse with the insurrectionary States and imposing duties thereon, is valid.<sup>3</sup>

See Supplement, *post*, 303.

1 *Hylton v. U. S.* 3 Dall. 171; *U. S. v. The William*, 2 Hall's L. J. 255.

2 *Pace v. Burgess*, 92 U. S. 372.

3 *Folsom v. U. S.* 4 Ct. Cl. 366.

*<sup>6</sup> No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.*

**Congress** is restrained from fostering or oppressing one port, or the commerce of one State, to the end of destroying equality and uniformity as to levies of contributions from foreign commerce.<sup>1</sup> The privileges and immunities to vessels entering or clearing from the ports of a State must be common and equal in all the ports of the several States.<sup>2</sup> The provision is a limitation on the power of Congress to regulate commerce;<sup>3</sup> it was intended to prevent vessels from being obliged to enter, clear, or pay duties in any State other than that to or from which they should be bound.<sup>4</sup> What is forbidden is not discrimination between individual ports within the same or different States, but discrimination between States, as Congress may make a port in one State a port of entry, while it refuses to make a port in another State a port of entry.<sup>5</sup> It does not apply to incidental advantages resulting from legislation connected with commerce.<sup>6</sup> It does not affect the States in the regulation of their domestic affairs:<sup>7</sup> as to a State tax upon an article brought into the State from another State;<sup>8</sup> or a tax upon capital invested in ships;<sup>9</sup> or a tax on money, although it is continuously invested in cotton purchased for exportation;<sup>10</sup> but it is a prohibition upon the State to destroy, by legislation, the commercial equality between the States.<sup>11</sup> This clause is not a restriction upon the legislation of the States in the regulation of their internal police, as in the inspection of vessels.<sup>12</sup> So, State pilot laws are not in conflict, because

they neither give a preference of one port over another, nor require vessels to pay duties.<sup>13</sup> "Of another" and "duties on another," relate to commerce and navigation.<sup>14</sup> See Supplement, *post*, 303.

- 1 *Munn v. Illinois*, 94 U. S. 113; *State v. Charleston*, 10 Rich. 240
- 2 *Pennsylvania v. Wheeling & B. Br. Co.* 18 How. 421.
- 3 *Passenger Cases*, 7 How. 283; 45 Mass. 282; *Alexander v. R. R. Co.* 3 Strob. 594.
- 4 *U. S. v. The William*, 2 Hall's L. J. 255.
- 5 *Pennsylvania v. Wheeling & B. Br. Co.* 18 How. 421
- 6 *Pennsylvania v. Wheeling & B. Br. Co.* 18 How. 421.
- 7 *Munn v. Illinois*, 94 U. S. 113; 69 Ill. 80; *Baker v. Wise*, 16 Gratt. 80.
- 8 *State v. Charleston*, 10 Rich. 240.
- 9 *State v. Charleston*, 10 Rich. 240.
- 10 *People v. Tax Commissioners*, 17 N. Y. Supr. 255.
- 11 *Passenger Cases*, 7 How. 283; 45 Mass. 282; *Alexander v. R. R. Co.* 3 Strob. 594.
- 12 *Baker v. Wise*, 16 Gratt. 139.
- 13 *Cooley v. Port Wardens*, 12 How. 299; *Pennsylvania v. Wheeling & B. Br. Co.* 18 How. 421.
- 14 *Gibbons v. Ogden*, 9 Wheat. 1.

<sup>7</sup> *No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.*

Anonymous, 3 Opin. Att. Gen. 13.

See Supplement, *post*, 303.

<sup>8</sup> *No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.*

**A** marshal of the United States cannot at the same time hold the office of commercial agent of a foreign nation.

6 Opin. Att.-Gen. 409.

**Sec. 10.** <sup>1</sup> *No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.*

**Secession and confederation.**—The Union of the States is perpetual and indissoluble.<sup>1</sup> A State has no right to secede.<sup>2</sup> The Ordinance of Secession and all acts to give it effect are null and void.<sup>3</sup> It did not annul or repeal the constitution and laws then in force;<sup>4</sup> nor did it suspend or destroy the existence of the State government. It continues to exist *de jure*, and its acts are as valid and binding as if no attempt at secession had been made.<sup>5</sup> A State can have no political existence outside and independent of the Constitution of the United States.<sup>6</sup> The attempt of a State to separate from the Union does not destroy its identity as a State, nor free it from the binding force of the Constitution of the United States.<sup>7</sup> The Ordinance of Secession did not abrogate the Constitution nor release citizens from their obligation of loyalty to the Government of the United States.<sup>8</sup> The constitutional obligations and duties of a State are not affected by its rebellion.<sup>9</sup> At no time were the rebellious States out of the Union.<sup>10</sup> There is no law, State or National, by which the Government of the United States is bound to recognize as valid the public or political action of a State engaged in rebellion.<sup>11</sup> The constitution in force before the Ordinance of Secession continues in force after the overthrow of the Rebellion,<sup>12</sup> and statutes adopted by a lawful government will be deemed valid.<sup>13</sup> The government of a rebellious State is not a *de facto* government.<sup>14</sup> Acts in furtherance of rebellion are void;<sup>15</sup> but acts necessary to peace and good government are valid.<sup>16</sup> All acts of a State in rebellion are binding upon the State, except such as were in aid of the Rebellion.<sup>17</sup> Statutes intended to promote good order and welfare may be enforced.<sup>18</sup> When a State by her acts sets aside her State government, and constitutes and establishes a new one, connected with another so-called central government, her practical relations to the Union were suspended; but they did not for a moment effect a separation from the Union.<sup>19</sup> The late so-called Confederate government never reached the dignity of a *de facto* government, and was without the authority to coin money, emit bills of credit, etc.<sup>20</sup> The government of the Confederation had no existence, except as organized treason.<sup>21</sup> It was not a *de facto* gov-

ernment in the sense that its acts are entitled to judicial recognition as valid.<sup>23</sup> It could not divest any right or property of the United States.<sup>23</sup> It had no right to sequester the property of a citizen of the United States as an "alien enemy."<sup>24</sup> It could not take, hold, or convey a valid title to property, real or personal.<sup>25</sup> The acts of confiscation of the Confederate government were null and void.<sup>26</sup> The State is not liable for services rendered to a rebellious government.<sup>27</sup> All contracts made in and of the Rebellion are void.<sup>28</sup> An obligation incurred by a corporation in aid of the Rebellion cannot be enforced.<sup>29</sup> Notes and bonds issued by a State while in rebellion are not binding.<sup>30</sup> Bonds and treasury notes of the Confederate States are not enforceable.<sup>31</sup> Treasury notes issued by a State in aid of rebellion are void.<sup>32</sup> Charters granted by a State in rebellion are void.<sup>33</sup> See Supplement, *post*, 303.

1 *Texas v. White*, 7 Wall. 700.

2 *White v. Hart*, 13 Wall. 646; *Sequestration Cases*, 30 Tex. 688; *Chancely v. Bailey*, 37 Ga. 532; *Cent. R. R. Co. v. Ward*, 37 Ga. 515; *Hood v. Maxwell*, 1 W. Va. 219.

3 *Keith v. Clark*, 97 U. S. 461; *Texas v. White*, 7 Wall. 700; *Pennywit v. Foote*, 27 Ohio St. 600; *U. S. v. Cathcart*, 1 Bond, 556; *U. S. v. Morrison*, Chase, 521.

4 *Harlan v. State*, 41 Miss. 566.

5 *Hawkins v. Filkins*, 24 Ark. 286; *White v. Cannon*, 6 Wall. 443; *Harlan v. St.* 41 Miss. 566; *St. v. Sears*, Phill. N. C. 146.

6 *Penn v. Tollison*, 26 Ark. 545.

7 *Keith v. Clark*, 97 U. S. 451.

8 *U. S. v. Cathcart*, 1 Bond, 556.

9 *White v. Hart*, 13 Wall. 646; *Homestead Cases*, 23 Gratt. 266.

10 *White v. Hart*, 13 Wall. 646; *Keith v. Clark*, 97 U. S. 461.

11 *Thompson v. Mankin*, 26 Ark. 586.

12 *Scruggs v. Huntsville*, 45 Ala. 220; *President v. State*, *Ibid.* 399.

13 *Reynolds v. Taylor*, 43 Ala. 420.

14 *Penn v. Tollison*, 26 Ark. 545; *Thompson v. Mankin*, 26 Ark. 586, *Thomas v. Taylor*, 42 Miss. 651.

15 *Texas v. White*, 7 Wall. 700; *Hatch v. Burroughs*, 1 Woods, 489.

16 *Texas v. White*, 7 Wall. 700; *Sequestration Cases*, 30 Tex. 688; *Chappell v. Williamson*, 49 Ala. 153; *Cook v. Oliver*, 1 Woods, 437.

17 *Keith v. Clark*, 97 U. S. 465; *Horn v. Lockhart*, 17 Wall. 570; *Sprott v. U. S.* 20 Wall. 459; *Home Ins. Co. v. U. S.* 8 Ct. Cl. 449; *Watson v. Stone*, 40 Ala. 451.

18 *Hill v. Boyland*, 40 Miss. 618; *Buchanan v. Smith*, 43 Miss. 90; *Wallace v. State*, 33 Tex. 445.

19 *Shortridge v. Macon*, Chase, 136.

20 *McCracken v. Poole*, 19 La. An. 359; *Bailey v. Milner*, 35 Ga. 330; *Thornburg v. Harris*, 3 Cold. 157.

21 *Sprott v. U. S.* 20 Wall. 459.

- 22 *Keppel v. Petersburg R. R. Co.* Chase, 167.  
23 *U. S. v. Kechler*, 9 Wall. 83.  
24 *Central &c. R. R. Co. v. Ward*, 37 Ga. 515; *Sequestration Cases*, 30 Tex. 688; *Vance v. Burtis*, 39 Tex. 88; *Knox v. Lee*, 12 Wall. 457; *Shortridge v. Macon*, Chase, 136.  
25 *Sprott v. U. S.* 20 Wall. 459.  
26 *Keppel v. Petersburg &c. R. R. Co.* Chase, 167; *Penn. v. Tollison*, 26 Ark. 545; *Thompson v. Mankin*, 26 Ark. 536; *Timms v. Grace*, 26 Ark. 598; *Perdicaris v. Charleston Gas Lt. Co.* Chase, 435.  
27 *Buck v. Vasser*, 47 Miss. 551; *Chisholm v. Colman*, 43 Ala. 204.  
28 *Keith v. Clark*, 97 U. S. 464; *Hanauer v. Doane*, 12 Wall. 342.  
29 *Bibb v. Commrs.* 44 Ala. 119; *Evans v. Richmond*, Chase, 551.  
30 *Hanauer v. Woodruff*, 15 Wall. 439; *Thomas v. Taylor*, 42 Miss. 651; *Leak v. Commrs.* 64 N. C. 132; *Rand v. State*, 65 N. C. 194.  
31 *Ray v. Thompson*, 43 Ala. 434; *Irvine v. Armstead*, 46 Ala. 363; *Martin v. Hewitt*, 44 Ala. 418; *Texas v. Hardenberg*, 10 Wall. 68.  
32 *Thomas v. Taylor*, 42 Miss. 651.  
33 *U. S. v. Home Ins. Co.* 22 Wall. 99.

**Bills of credit.**—A bill of credit is a paper issued by a sovereign power, containing a pledge of its faith, and designed to circulate as money.<sup>1</sup> It must be issued by a State on its faith and credit, designed to circulate as money,<sup>2</sup> receivable for all debts and taxes, salaries and fees,<sup>3</sup> and although it is not made a legal tender.<sup>4</sup> The emission is a bill of credit if the intention is to create a currency.<sup>5</sup> The intent is the intent of the legislature, to be deduced from its acts alone.<sup>6</sup> It may comprehend any instrument by which the State engages to pay money at a future day,<sup>7</sup> and may cover a certificate of debt<sup>8</sup> or notes of a State bank.<sup>9</sup> A State cannot, by indirect means, or any device, emit bills of credit.<sup>10</sup> Instruments executed, binding a State to pay money at a future day for services rendered or for money borrowed, are not bills of credit;<sup>11</sup> nor is a treasury note issued as evidence of a loan, if not intended as a circulating medium;<sup>12</sup> nor an auditor's warrant issued according to law for the payment of a demand against the State.<sup>13</sup> States may incorporate banks, and their notes are not bills of credit,<sup>14</sup> not even if the State pledges its credit for their payment,<sup>15</sup> nor though the bank is owned by the State, and the officers give bonds to the State for the faithful performance of their duties.<sup>16</sup> Where a State becomes a stockholder it imparts none of its sovereignty to the corporation.<sup>17</sup> States and municipal corporations may borrow money and give proper securities therefor;<sup>18</sup> so, a State may authorize a municipal corporation to issue certificates of indebtedness,<sup>19</sup> or treasury notes made receivable for all debts due, and to pledge its



real estate for their redemption,<sup>20</sup> but certificates of indebtedness for the payment of current expenses to be receivable for all State taxes, etc., are bills of credit, and void.<sup>21</sup> Confederate notes were not bills of credit.<sup>22</sup> The State governments organized by force in the Rebellion could not emit bills of credit.<sup>23</sup> A bill of credit is not a good consideration for a contract.<sup>24</sup>

1 *Craig v. Missouri*, 4 Peters, 431; *Briscoe v. Bk. of Ky.* 11 Peters, 257; *Woodruff v. Trapnall*, 10 How. 190; *Bailey v. Milner*, 1 Abb. U. S. 263; *City Bk. v. Mahan*, 21 La. An. 751; *State v. Compt. Gen.* 4 S. C. 185; *Auditor v. Treasurer*, *Ibid.* 311.

2 *Curran v. Arkansas*, 15 How. 304; 12 Ark. 321; *Indiana v. Woram*, 6 Hill, 33.

3 *Craig v. Missouri*, 4 Peters, 431; *In re Milner*, 1 Bank Reg. 107.

4 *Craig v. Missouri*, 4 Peters, 431; *Byrne v. Missouri*, 8 Peters, 40; *Billis v. State*, 2 McCord, 12; *McFarland v. State Bank*, 4 Ark. 44.

5 *State v. Hoge*, 4 Rich. (N. S.) 185; *State v. Auditor*, *Ibid.* 311; *Craig v. Missouri*, 4 Peters, 431.

6 *Payaud v. State*, 13 Miss. 491.

7 *Craig v. Missouri*, 4 Peters, 410; *Byrne v. Missouri*, 8 Peters, 40.

8 *Craig v. Missouri*, 4 Peters, 410; *Byrne v. Missouri*, 8 Peters, 40. But see *State v. Cardozo*, 5 Rich. (N. S.) 297.

9 *Briscoe v. Bank of Ky.* 11 Peters, 257; *Darrington v. Bank of Alabama*, 13 How. 12.

10 *Briscoe v. Bank of Ky.* 11 Peters, 341, explaining *Bank of Ky. v. Wister*, 2 Peters, 318; *Bank v. Clarke*, 4 Mo. 59; *Griffith v. Bank*, 4 Mo. 255.

11 *Craig v. Missouri*, 4 Peters, 410; *Payaud v. State*, 13 Miss. 491.

12 *Green v. Sizer*, 40 Miss. 530.

13 *Payaud v. State*, 13 Miss. 491.

14 *Briscoe v. Bank of Ky.* 11 Peters, 431; *Woodruff v. Trapnall*, 10 How. 190; *Darrington v. Bank of Ala.* 13 How. 12; *Curran v. Arkansas*, 15 How. 304; *Veazie Bank v. Fenno*, 8 Wall. 553; *Owen v. Branch Bank*, 3 Ala. 253; *McFarland v. State Bank*, 4 Ark. 44; *Bank v. Spilman*, 3 Dana, 150; *Lampton v. Bank*, 2 Litt. 300; *Billis v. State*, 2 McCord, 12; *Craighead v. Bank*, 1 Meigs. 199; *State v. Calvin*, R. M. Charlt. 151. And see *Vermont Bank v. Porter*, 5 Day, 316.

15 *Darrington v. Bank of Alabama*, 13 How. 16.

16 *Billis v. State*, 2 McCord, 12. *Contra*, *Linn v. State Bank*, 3 Ill. 87.

17 *Briscoe v. Bank of Kentucky*, 1 Peters, 257; 7 J. J. Marsh. 349; *Woodruff v. Trapnall*, 10 How. 190; 8 Ark. 236; *Darrington v. Branch Bank of Alabama*, 13 How. 12; *Owen v. Branch Bank*, 3 Ala. 253; *McFarland v. State Bank*, 4 Ark. 44; *Central Bank v. Little*, 11 Ga. 346; *Billis v. State*, 2 McCord, 12.

18 *McCoy v. Washington Co.* 3 Wall. Jr. 381.

19 *Mayor v. State*, 15 Md. 376; *Smith v. New Orleans*, 23 La. An. 5; *Delafield v. Illinois*, 26 Wend. 192.

20 *Smith v. New Orleans*, 23 La. An. 5. And see *State v. Cardozo*, 5 S. C. 297.

21 *City National Bank v. Mahan*, 21 La. An. 751.

22 *Balley v. Milner*, 35 Ga. 330.

23 *McCracken v. Poole*, 19 La. An. 350; *In re Milner*, 1 Bank. Reg. 107.

24 *Craig v. Missouri*, 4 Peters, 431; *Bank v. Clark*, 4 Mo. 59; *Linn v. State Bank*, 5 Ill. 87.

**Legal tender.**—A statute making bank-notes, or anything but gold and silver, a legal tender, is unconstitutional,<sup>1</sup> or a statute requiring a bank to receive its own notes in payment of the note of another bank,<sup>2</sup> or a statute authorizing the tender of the scrip of a corporation for taxes or assessments,<sup>3</sup> or a statute which provides for a stay of execution unless the creditor accepts payment in State bank paper.<sup>4</sup> This clause does not oblige States to pass tender laws.<sup>5</sup> A State may establish banks, prohibit the circulation of foreign notes, and determine in what the public dues may be paid.<sup>6</sup>

1 *Briscoe v. Bank of Kentucky*, 11 Peters, 257; 7 J. J. Marsh. 349; *Lowry v. McGhee*, 8 Yerg. 242; *Edwards v. Kearzey*, 96 U. S. 606.

2 *Bank of States v. Bank of Cape Fear*, 13 Ired. 75.

3 *Gaines v. Rives*, 8 Ark. 220; *State v. Beackmo*, 8 Blackf. 246.

4 *Briscoe v. Bank of Kentucky*, 11 Peters, 257; 7 J. J. Marsh. 340; *Townsend v. Townsend*, Peck, 1; *Balley v. Gentry*, 1 Mo. 164.

5 *Van Huse v. Kanouse*, 13 Mich. 303.

6 *Woodruff v. Trapnall*, 10 How. 190; 8 Ark. 236; *Bush v. Shipman*, 5 Ill. 186; *Paup v. Drew*, 10 How. 218; 9 Ark. 205; *Trigg v. Drew*, 10 How. 224.

**Bill of attainder.**—A bill of attainder is a legislative act which inflicts punishment without a judicial trial, absolutely or conditionally,<sup>1</sup> and any deprivation or suspension of any inalienable right is punishment.<sup>2</sup> A State law which deprives a party of the privilege of enforcing a contract on account of acts previously done is a bill of attainder,<sup>3</sup> or a State law which deprives a party of the right to pursue an avocation unless he takes an expurgatory oath of freedom from guilt for past offenses,<sup>4</sup> as a disqualification of all teachers and clergymen who took part in the late Rebellion,<sup>5</sup> or a statute depriving of a right to rehearing in an attachment suit unless he will take an oath that he has not theretofore done certain acts, is a bill of attainder.<sup>6</sup> But if a party by a statute is not precluded from asserting a title or enforcing a right, it is not a bill of attainder.<sup>7</sup> So, where a right is the creature of the organic law of a State, the State may require an expurgatory oath that he has not done a certain act before he may be allowed the exercise of that right, as the right to vote,<sup>8</sup> or the right to practice law.<sup>9</sup> A statute of indemnity for acts done under military authority during the Civil War is not a bill of attainder.<sup>10</sup>

- 1 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.
- 2 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.
- 3 *McNealy v. Gregory*, 13 Fla. 417.
- 4 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263; *Murphy's Case*, 41 Mo. 339; *State v. Heighland*, 41 Mo. 338. But see *State v. Garsche*, 36 Mo. 256.
- 5 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.
- 6 *Pierce v. Carskadon*, 16 Wall. 234; *Kyle v. Jenkins*, 6 West Va. 371; *Ross v. Jenkins*, 7 *Ibid.* 234; *Lynch v. Hoffman*, *Ibid.* 553.
- 7 *Drehman v. Stifle*, 3 Wall. 595; 41 Mo. 184.
- 8 *Anderson v. Baker*, 23 Md. 531; *Blair v. Ridgley*, 41 Mo. 63; *State v. Neal*, 42 Mo. 119; *Randolph v. Good*, 3 West Va. 551.
- 9 *Cummings v. Missouri*, 4 Wall. 333; *Ex parte Garland*, 4 Wall. 379.
- 10 *Drehman v. Stifle*, 8 Wall. 595; 41 Mo. 184; *Clark v. Dick*, 1 Dill. 6; *Smith v. Owen*, 42 Mo. 508; *State v. Gatzweiler*, 49 Mo. 18; *Hess v. Johnson*, 3 West Va. 645.

See *Ante*, Art. 1, Sec. 9, (3).

**Ex post facto laws.**—The prohibition as to *ex post facto* laws means that a State shall not pass laws after a fact done by a subject or citizen, which shall have relation to such fact, and shall punish him for having done it.<sup>1</sup> It is not intended to prohibit the passage of retrospective laws, but only *ex post facto* laws.<sup>2</sup> The words *ex post facto* are not applicable to civil laws, which may be retrospective.<sup>3</sup> A statute, to come within this prohibition, must not only be retroactive, but must retroact by way of punishment.<sup>4</sup> So, if a new statute provides for a remission of part of a sentence it is not liable to objection,<sup>5</sup> nor if it mitigates the punishment.<sup>6</sup> The words *ex post facto* relate exclusively to penal laws,<sup>7</sup> and such a law is one which renders an act punishable which was not punishable at the time it was committed;<sup>8</sup> or which renders an act punishable in a manner different from when it was committed;<sup>9</sup> or which changes the punishment after conviction for the offense;<sup>10</sup> or which aggravates the punishment by a law posterior to the commission of the offense,<sup>11</sup> or which adds a new punishment or increases an old one, for an offense committed before its adoption.<sup>12</sup> A statute which alters the legal rules of evidence and prescribes less or different testimony for conviction than the law required at the time of the commission of the offense is an *ex post facto law*;<sup>13</sup> so, a statute repealing an amnesty act is an *ex post facto law*;<sup>14</sup> so, a statute allowing a divorce for an act which was no ground for a divorce at the time it was committed, is an *ex post facto law*;<sup>15</sup> so, a statute suspending the right of a party engaged in rebellion to continue or prosecute a suit, is an *ex post facto law*.<sup>16</sup> A statute which provides that a party the second time con-

victed of petit larceny is to be deemed guilty of a felony, is not *ex post facto*; <sup>17</sup> so, a law changing the forms of procedure by which persons accused of crime are to be tried for offenses committed before the law was passed, is not *ex post facto*. <sup>18</sup> A statute may make the breach of a pre-existing contract criminal, although it was before only subject to a suit for damages. <sup>19</sup> A law increasing costs on conviction in criminal cases is *ex post facto*. <sup>20</sup> A statute adding penalties and instituting new methods of proceeding cannot be applied to prior offenses. <sup>21</sup>

1 *Calder v. Bull*, 3 Dall. 386; *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.

2 *Watson v. Mercer*, 8 Peters, 109; *Albee v. May*, 2 Paine, 74; *Tate v. Stoolzfoos*, 10 Serg. & R. 35; *Sedgwick v. Bunker*, 16 Kans. 438; *Tilton v. Swift*, 40 Iowa, 78; *Baldwin v. Newark*, 33 N. J. 153; *Lane v. Nelson*, 79 Pa. St. 407; *Calder v. Bull*, 3 Dall. 336; *Buckner v. Street*, 1 Dill. 254; *Randall v. Kreiger*, 2 Dill. 444; *Milner v. Huber*, 3 McLean, 217; *Bloomer v. Stolley*, 5 McLean, 165; *Johnston v. Van Dyke*, 6 McLean, 441; *Holman v. Bank of Norfolk*, 12 Ala. 369.

3 *Watson v. Mercer*, 8 Peters, 109; *Locke v. N. O.* 4 Wall. 173; *Rich v. Flanders*, 30 N. H. 304.

4 *Hartung v. People*, 22 N. Y. 103; *State v. Paul*, 5 R. I. 190; *State v. Keeran*, 5 R. I. 497.

5 *Calder v. Bull*, 3 Dall. 336; *Fletcher v. Peck*, 6 Cranch, 137; *State v. Arlin*, 30 N. H. 179; *Hartung v. People*, 22 N. Y. 95.

6 *Turner v. State*, 40 Ala. 21; *Commonwealth v. Gardner*, 77 Mass. 438; *State v. Arlin*, 30 N. H. 179; *State v. Kent*, 65 N. C. 311.

7 *Watson v. Mercer*, 8 Peters, 109; *Carpenter v. Pennsylvania*, 17 How. 453; *Ex parte Garland*, 4 Wall. 330; *Lock v. New Orleans*, 4 Wall. 172; *Calder v. Bull*, 3 Dall. 330; 2 Root. 352; *Bridgeport v. Hubbell*, 5 Conn. 240; *Elliott v. Mayfield*, 4 Ala. 417; *Holman v. Bank of Norfolk*, 12 Ala. 379; *Bridgeport v. Hubbell*, 5 Conn. 240; *Wilder v. Lumpkin*, 4 Ga. 209; *Boston v. Cummings*, 16 Ga. 102; *Aldridge v. T. C. & C. R. R. Co.* 2 Stew. & P. 199; *Bloodgood v. Carnack*, 5 Stew. & P. 276.

8 *Fletcher v. Peck*, 6 Cranch, 87; *Cummings v. Missouri*, 4 Wall. 332; *Matter of Dorsey*, 5 R. I. 190; *Gut v. State*, 9 Wall. 38.

9 *Fletcher v. Peck*, 6 Cranch, 133; *Hartung v. People*, 22 N. Y. 95; *Shepherd v. People*, 25 N. Y. 406; *State v. McDonald*, 20 Minn. 136.

10 *Hartung v. People*, 22 N. Y. 95.

11 *Dickinson v. Dickinson*, 3 Murph. 327; *Shepherd v. People*, 25 N. Y. 406; *U. S. v. Gilbert*, 2 Sum. 101.

12 *Wilson v. O. & M. R. R. Co.* 64 Ill. 542; *Ross v. Riley*, 19 Mass. 165; *State v. Salomons, Riley*, 99; *Hartung v. People*, 22 N. Y. 95; 26 N. Y. 167.

13 *Hart v. State*, 40 Ala. 32; *State v. Bond*, 4 Jones N. C. 9; *State v. Johnson*, 12 Minn. 476.

14 *State v. Reith*, 63 N. C. 140.

15 *Dickinson v. Dickinson*, 3 Murph. 327. *Contra*, *Carson v. Carson*, 40 Miss. 349.

16 *Davis v. Pierce*, 7 Minn. 13; *Keough v. McNitt*, *Ibid.* 30; *McFarland v. Butler*, 8 Minn. 116; *Jackson v. Butler*, *Ibid.* 117; *Wilcox v. Davis*, 7 Minn. 23; *Vernon v. Henson*, 24 Ark. 242.

17 *Ex parte Gutierrez*, 45 Cal. 430; *Rand v. Commonwealth*, 9 Gratt. 738.

18 *People v. Mortimer*, 46 Cal. 114.

19 *Blann v. State*, 39 Ala. 353.

20 *Caldwell v. State*, 55 Ala. 133.

21 *Miles v. State*, 40 Ala. 39; *Moore v. State*, Ibid. 49; *Stephens v. State*, Ibid. 67; *Miller v. State*, Ibid. 54.

See Ante, Art. I, § 9 (3) ; Supplement, *post*, 303.

**What not *ex post facto* laws.**—The words *ex post facto* do not relate to criminal proceedings.<sup>1</sup> So, statutes creating new tribunals to try past offenses,<sup>2</sup> or changing the place of trial,<sup>3</sup> or a statute which operates only on the forms of the proceedings, rendering a defective indictment valid,<sup>4</sup> or allowing amendments thereto,<sup>5</sup> or changing the mode of summoning juries,<sup>6</sup> or allowing the State a certain number of peremptory challenges,<sup>7</sup> or reducing the number of peremptory challenges, are not *ex post facto* laws.<sup>8</sup> But a statute which deprives the accused of the right to object to an incompetent grand juror is an *ex post facto* law.<sup>9</sup> A statute allowing counsel for the State to open and close the argument instead of alternating, is valid.<sup>10</sup> A statute authorizing the jury to assess the amount of the fine to be imposed, or punishment to be inflicted, is not an *ex post facto* law.<sup>11</sup> A statute allowing the court, in granting a divorce, to decree that the guilty party shall not contract marriage during the lifetime of the other party, is not an *ex post facto* law.<sup>12</sup> So, a law setting aside a decree and granting a new trial, is not an *ex post facto* law.<sup>13</sup> Any change, referable to prison discipline or penal administration, may take effect on past as well as future offenses.<sup>14</sup> A statute imposing a higher punishment for a second offense is not in conflict.<sup>15</sup> A law which repeals a prior law before the performance of the acts necessary to give vested rights, is not an *ex post facto* law,<sup>16</sup> nor a law which prescribes conditions under which, alone, a thing may be used in future.<sup>17</sup> A law regulating escheats, which does not refer to crimes, pains, and penalties, is not an *ex post facto* law.<sup>18</sup> A State law imposing a tax upon transactions of a preceding year is not an *ex post facto* law.<sup>19</sup> A State law exacting an expurgatory oath as a condition for holding an office is not an *ex post facto* law.<sup>20</sup>

1 *Walston v. Comm.* 16 B. Mon. 15; *People v. Mortimer*, 46 Cal. 114; *Perry v. Comm.* 3 Gratt. 632; *Manning v. State*, 14 Tex. 402.

2 *Commonwealth v. Phillips*, 28 Mass. 28; *State v. Sullivan*, 14 Rich. 281.

3 *Gut v. State*, 9 Wall. 35.

4 *State v. Sears*, Phil. N. C. 146; *Commonwealth v. Bean*, Thach. C. C. 85.

5 *State v. Manning*, 14 Tex. 402.

- 6 *Perry v. Commonwealth*, 3 Gratt. 632.
- 7 *Walston v. Commonwealth*, 16 B. Mon. 15; *State v. Ryan*, 13 Minn. 370.
- 8 *Reynolds v. State*, 1 Ga. 222; *Perry v. Commonwealth*, 3 Gratt. 632.
- 9 *Martin v. State*, 22 Tex. 214.
- 10 *People v. Mortimer*, 46 Cal. 114.
- 11 *Holt v. State*, 2 Tex. 363; *Dawson v. State*, 6 Tex. 347.
- 12 *Elliott v. Elliott*, 38 Md. 357.
- 13 *Calder v. Bull*, 3 Dall. 336.
- 14 *Hartung v. People*, 22 N. Y. 95. But see *Strong v. State*, 1 Blackf. 193; *Commonwealth v. Gardner*, 77 Mass. 438.
- 15 *Ex parte Gutierrez*, 45 Cal. 430; *Rand v. Commonwealth*, 9 Gratt. 738; *Ross v. Riley*, 19 Mass. 165; *Plumbly v. Commonwealth*, 43 Mass. 413.
- 16 *Van Horné v. Dorrance*, 2 Dall. 304.
- 17 *Evans v. Jordan*, 9 Cranch, 199; 1 Brock. 248; *Evans v. Weiss*, 2 Wash. C. C. 342; *Evans v. Robinson*, 1 Car. L. R. 209.
- 18 *White v. Wayne*, Charl. 194.
- 19 *State v. Bell*, Phill. (N. C.) 76.
- 20 *State v. Woodson*, 41 Mo. 227.

**State legislation inhibited.**—The inhibition in this provision is on the States, and not on the Congress.<sup>1</sup> But Congress cannot by authorization or ratification give the slightest effect to a State law or constitution in conflict with the Constitution of the United States.<sup>2</sup> The prohibition goes to the power of the State, and not to the manner or character of its action.<sup>3</sup> The body on which the prohibition rests is the legislative department.<sup>4</sup> A State constitution is a law so far that it cannot impair the obligation of contracts by a retroactive provision.<sup>5</sup> So of a constitutional amendment.<sup>6</sup> A change in the State constitution cannot release a State from its contracts made under the original constitution.<sup>7</sup> The term “law” includes a judicial decision as well as a statute.<sup>8</sup> The Constitution only prohibits the impairing of the obligations of contracts.<sup>9</sup> A law prohibiting the making of certain contracts is valid.<sup>10</sup> A claim arising out of a tort, and not from a contract, is not within the inhibition.<sup>11</sup> The inhibition is wholly prospective, and States may legislate as to contracts thereafter to be made.<sup>12</sup> The legislature cannot alter the nature and legal effect of an existing contract, or violate its obligation.<sup>13</sup> Whether the contract relate to real or personal estate, is executed or executory, on parol or under seal, the Constitution preserves it inviolate as to its obligations.<sup>14</sup> If a contract

when made is valid, its validity and obligation cannot be impaired by any subsequent legislation, decision, alteration, or construction of the law.<sup>15</sup>

1 *Matt. of Klein*, 1 How. 277; *Satterlee v. Matthewson*, 2 Peters, 380; 16 Serg. & R. 191; *Hepburn v. Griswold*, 8 Wall. 603; *Leg'l Tender Cases*, 12 Wall. 457; *White v. Hart*, 13 Wall. 646; 39 Ga.; *Bloomer v. Stolley*, 5 McLean, 158; *Evans v. Eaton*, 1 Peters C. C. 337; *Gunn v. Barry*, 8 Bank Reg. 1; *In re Smith*, 8 Bank Reg. 405; *Kunzler v. Kohaus*, 5 Hill. 325; *Metrop. Bank v. Van Dyck*, 27 N. Y. 400; *Mayer v. Knight*, 27 Tex. 719.

2 *Gunn v. Barry*, 8 Bank Reg. 1; *In re Kennedy*, 2 Rich. N. S. 216. *Calhoun v. Calhoun*, 2 Rich. N. S. 283; *White v. Hart*, 13 Wall. 646; 39 Ga. 306.

3 *Jacoway v. Denton*, 25 Ark. 625.

4 *Trustees v. Rider*, 13 Conn. 87.

5 *Dodge v. Woolsey*, 18 How. 331; *Groves v. Slaughter*, 15 Peters, 449; *Railroad v. McClure*, 10 Wall. 511; *Delmas v. Ins. Co.* 14 Wall. 667; *Gunn v. Barry*, 15 Wall. 610; 8 Bank Reg. 1; *Moultrie Co. v. Savings Bank*, 92 U. S. 632; *In re McLean*, 2 Bank Reg. 173; *Marsh v. Burroughs*, 1 Woods, 463; *Osborn v. Nicholson*, 1 Dill. 235; *Hawkins v. Filkins*, 24 Ark. 236; *Jacoway v. Denton*, 25 Ark. 625; *McNealy v. Gregory*, 13 Fla. 417; *Homestead Cases*, 23 Gratt. 266; *Furman v. Nichol*, 8 Wall. 44; *Moore v. Illinois Central R. R. Co.* 4 Chic. L. N. 123; *Edwards v. Jager*, 19 Ind. 407; *Logwood v. Planters' Bank*, 1 Minor, 23; *Chicago v. Rumsey*, 87 Ill. 348; *Ex parte Lee's Bank*, 21 N. Y. 9; *Rutland v. Copes*, 15 Rich. 84; *Hazen v. Union Bank*, 1 Sneed, 115; *Keith v. Clark*, 2 South L. Rev. 24; *Union Bank v. State*, 9 Yerg. 490; *Jones v. Brandon*, 48 Ga. 533; *Chambliss v. Jordan*, 50 Ga. 81.

6 *Pac. R. R. Co. v. McGuire*, 20 Wall. 36; *Keith v. Clark*, 97 U. S. 454.

7 *Dodge v. Woolsey*, 18 How. 331; *Matheny v. Golden*, 5 Ohio St. 361.

8 *Butz v. Muscatine*, 8 Wall. 575; *Chicago v. Sheldon*, 9 Wall. 50; *City v. Lampson*, *Ibid.* 477; *Township v. Talcott*, 19 Wall. 666.

9 *Thornton v. Hooper*, 14 Cal. 9.

10 *Churchman v. Martin*, 54 Ind. 380.

11 *Dash v. Van Kleeck*, 7 Johns. 477; *Amy v. Smith*, 1 Litt. 326; *Thayer v. Seavey*, 11 Me. 284.

12 *Edwards v. Kearzey*, 96 U. S. 603.

13 *King v. Dedham Bank*, 15 Mass. 447.

14 *Trustees v. Rider*, 13 Conn. 87; *Taylor v. Stearns*, 18 Gratt. 244; *Farrington v. Tennessee*, 95 U. S. 683.

15 *Ohio L. I. & T. Co. v. Debolt*, 16 How. 416; 1 Ohio St. 563; *Gelpcke v. Dubuque*, 1 Wall. 175; *Havemeyer v. Iowa Co.* 2 Wall. 294; *Thompson v. Lee Co.* 3 Wall. 327; *Mitchell v. Burlington*, 4 Wall. 270; *Lee Co. v. Rogers*, 7 Wall. 181; *City v. Lamson*, 9 Wall. 477; *Chicago v. Sheldon*, 9 Wall. 55; *White v. Hart*, 13 Wall. 647; *Osborn v. Nicholson*, 13 Wall. 655; *Olcott v. Supervisors*, 16 Wall. 678; *Boyce v. Tabb*, 18 Wall. 546; Ill. Cent. R. R. Co. v. *McLean Co.* 17 Ill. 291; *Hunsaker v. Wright*, 30 Ill. 146; *Newstadt v. Ill. Cent. R. R. Co.* 31 Ill. 484. But see *McClure v. Owen*, 26 Iowa, 243.

**Retrospective statutes.**—Laws merely retrospective do not necessarily impair the obligation of contracts.<sup>1</sup> If they do not violate the obligation of contracts or partake of the character of *ex post facto* laws, they are not forbidden.<sup>2</sup> States cannot prevent citizens from making what contract they please out of the State,<sup>3</sup> nor can State laws operate on contracts of citizens beyond the limit of the State.<sup>4</sup> An obligation derived from the laws of one State cannot be impaired by the laws of another State, but there is no provision requiring each State in the Union to give the same legal obligation to contracts made in any other State.<sup>5</sup> State laws in conflict with acts of Congress must give way.<sup>6</sup> States in rebellion were never out of the Union and could not pass laws violating the obligations of contracts,<sup>7</sup> nor could they adopt such a provision in their constitutions preparatory to the restoration of their relations to the Union.<sup>8</sup> But all acts of such States during the Rebellion, not in conflict with the Constitution and laws of the United States, are binding.<sup>9</sup> A mortgage is not invalid because the loan was Confederate State bonds;<sup>10</sup> such consideration was unlawful only when used in aid of the Rebellion;<sup>11</sup> so, their voluntary acceptance extinguishes a debt,<sup>12</sup> and their payment to an executor is valid;<sup>13</sup> so, a guardian is entitled to credit for and chargeable with the value of Confederate State bonds.<sup>14</sup>

1 *Locke v. New Orleans*, 4 Wall. 173; *Watson v. Mercer*, 8 Peters, 110; *Curtis v. Whitney*, 13 Wall. 68; *Baldwin v. Newark*, 38 N. J. 159.

2 *Charles River Bridge v. Warren Bridge*, 11 Peters, 420; *Satterlee v. Matthewson* 2 Peters, 380; *Davis v. Ballard*, 1 J. J. Marsh. 563; *Brown v. Storm*, 4 Vt. 37; *Andrews v. Russell*, 7 Blackf. 574; *Holmes v. Bank*, 12 Ala. 369; *Baltimore &c. R. R. Co. v Nesbit*, 10 How. 401; *Wilson v. Hardesty*, 1 Md. Ch. 66; *Albee v. May*, 2 Paine, 74; *Bay v. Gage*, 26 Barb. 447; *Drehman v. Stifle*, 41 Mo. 184; *Wilder v. Lumpkin*, 4 Ga. 249; *Boston v. Cummings*, 16 Ga. 102; *Bronson v. Kinzie*, 1 How. 311.

3 *Lamb v. Bowser*, 7 Biss. 315, 372.

4 *Ogden v. Saunders*, 12 Wheat. 213.

5 *Lapsley v. Brashear*, 4 Litt. 47.

6 *U. S. v. Ames*, 1 Wood. & M. 76; *Perry Manuf. Co. v. Brown*, 2 *Ibid.* 462.

7 *White v. Hart*, 13 Wall. 646; *Gunn v. Barry*, 15 Wall. 610; *Horn v. Lockart*, 17 Wall. 581; *Williams v. Bruffy*, 96 U. S. 176; *Houston v. DeLoach*, 43 Ala. 364; *Powell v. Boon*, 43 Ala. 469.

8 *Gunn v. Barry*, 15 Wall. 610; *White v. Hart*, 13 Wall. 646; 39 Ga. 306; *In re Kennedy*, 2 Rich. N. S. 116; *Calhoun v. Calhoun*, 2 Rich. N. S. 283.

9 *Keith v. Clark*, 11 Chic. L. N. 118; *Reynolds v. Taylor*, 43 Ala. 420.

10 *Micou v. Ashurst*, 55 Ala. 607.

11 *Van Hoose v. Bush*, 54 Ala. 342.

12 *McQueen v. McQueen*, 55 Ala. 433; *Hester v. Watkins*, 54 Al. 44.



13 *Blount v. Moore*, 54 Ala. 360; *Foscue v. Lyon*, 85 Ala. 441.

14 *Ferguson v. Lowery*, 54 Ala. 510; *Harbin v. Bell*, 54 Ala. 380.

**Contracts.**—A contract is an agreement to do or not to do a certain thing.<sup>1</sup> It is a compact between two or more persons,<sup>2</sup> or between States,<sup>3</sup> or between a State and the United States;<sup>4</sup> but not social compacts between the citizens and the State.<sup>5</sup> It comprises obligations or legal ties whereby one party binds himself or becomes bound to pay a sum of money, or to perform or omit to perform a certain act,<sup>6</sup> without distinction between express and implied agreements.<sup>7</sup> It embraces those contracts which respect property or some object of value, and which confer rights that may be asserted in a court of justice.<sup>8</sup> It applies to agreements which impose obligations under general principles of law, and not those which are void under the State constitution, or those entered into without authority from the party sought to be bound.<sup>9</sup> The character of the parties to a contract does not prevent the application of this prohibition,<sup>10</sup> and corporations are within it as a part of the general law.<sup>11</sup> Contracts include executed as well as executory;<sup>12</sup> express as well as implied agreements.<sup>13</sup>

1 *Ogden v. Saunders*, 12 Wheat. 213; *Sturgis v. Crowninshield*, 4 Wheat. 122; *Woodruff v. State*, 3 Ark. 235; *Trustees v. Rider*, 13 Conn. 87; *Robinson v. Magee*, 9 Cal. 81; *Farnsworth v. Vance*, 2 Cold. 103.

2 *Fletcher v. Peck*, 6 Cranch, 136.

3 *Green v. Biddle*, 8 Wheat. 84; *Achison v. Huddleson*, 12 How. 293; 7 Gill, 179; *Penn. v. Wheeling &c. Bridge Co.* 13 How. 518; 9 How. 647; *Stokes v. Searight*, 3 How. 151; *Neil v. State*, *Ibid.* 720; *Von Hoffman v. Quincy*, 4 Wall. 550; *Spooner v. McConnell*, 1 McLean, 337; *Allen v. McKean*, 1 Sum. 276; *Cox v. State*, 3 Blackf. 193; *Canal Co. v. R. R. Co.* 4 Gill & J. 1; *Hogg v. Canal Co.* 5 Ohio, 410.

4 *Lowry v. Francis*, 2 Yerg. 534.

5 *Billings v. Hall*, 7 Cal. 1; *State v. Paul*, 5 R. I. 185.

6 *Woodruff v. State*, 3 Ark. 235.

7 *Woodruff v. State*, 3 Ark. 235; *Myrick v. Battle*, 5 Fla. 345.

8 *Fletcher v. Peck*, 6 Cranch, 87; *Dartmouth College v. Woodward*, 4 Wheat. 518; *Butler v. Pennsylvania*, 10 How. 402; *Trustees v. Rider*, 13 Conn. 87; *Regents v. Williams*, 9 Gill & J. 365; *Swan v. Buck*, 40 Miss. 268; *Herrick v. Randolph*, 13 Vt. 530.

9 *People v. Roper*, 35 N. Y. 629.

10 *Trustees v. Rider*, 13 Conn. 87; *Regents v. Williams*, 9 Gill & J. 365.

11 *Fletcher v. Peck*, 6 Cranch, 87; *State v. Wilson*, 7 Cranch, 164; 2 N. J. 300; *Terrett v. Taylor*, 9 Cranch, 43; *Town of Pawlett v. Clark*, 9 Cranch, 272; *Green v. Biddle*, 8 Wheat. 1; *Astrom v. Hammond*, 3 McLean, 107; *Woodruff v. Trapnall*, 10 How. 190; 8 Ark. 236; *Derby T. Co. v. Parks*, 10 Conn. 522; *Trustees v. Rider*, 13 Conn. 87; 13 Ired. 75; *Stamire v. Taylor*, 3 Jones, (N. C.) 207.

11 *Fletcher v. Peck, & Crunch, 10; Van Hoffman v. Quincy, & Wall, 60; Green v. Biddle, & Wheat, 1.*

12 *Fletcher v. Peck, & Crunch, 10; Dartmouth Coll. v. Woodward, & Wheat, 510.*

**Contracts with State.** — In its broadest sense, contracts comprehend the political, between the Government and its citizens<sup>1</sup> and legislative enactments become contracts under this provision.<sup>2</sup> A State legislature may contract with an individual,<sup>3</sup> and by special legislation a subsequent legislature may be bound,<sup>4</sup> but the details of a State contract may be altered where the alteration does not affect the obligation.<sup>5</sup> Every contract with the State presupposes a consideration.<sup>6</sup> State legislation in matters of purely legislative concern, or general political powers, are not within the inhibition.<sup>7</sup> General laws are not contracts, but only the expression of the legislative will, and laws which amend or repeal them are not within the inhibition<sup>8</sup> such as general regulations for the descent and transmission of property.<sup>9</sup> States are bound by all their contracts, but this does not include all contracts with public officers or municipal corporations.<sup>10</sup> No, appointment to a public office is not a contract,<sup>11</sup> and the fees may be reduced by legislation if there is no provision in the Constitution to oppose it,<sup>12</sup> or the office may be abolished,<sup>13</sup> or the salary may be diminished,<sup>14</sup> or additional duties may be attached without increase in compensation,<sup>15</sup> and an officer of a public corporation is a public officer.<sup>16</sup> If a professor accepts office in a university controlled by the State his employment may be terminated at the discretion of the legislature.<sup>17</sup> A statute which implies a contract executory does not create any rights or duties which can be impaired.<sup>18</sup> A statute granting an annuity for services rendered is not a contract.<sup>19</sup> A statute offering a bounty is not a contract except as to those who earn the bounty while it is in force.<sup>20</sup>

1 *Dartmouth College v. Woodward, & Wheat, 510; Swan v. Book, 20 Min. 200; Winter v. Jones, 10 Ga. 108.*

2 *New Jersey v. Yard, 10 U. S. 344; Winter v. Jones, 10 Ga. 108.*

3 *Trustees v. Bailey, 10 Fla. 112; Winter v. Jones, 10 Ga. 100; Canal Co. v. Railroad Co. & Gill & J. 1.*

*v. State Bank*, 5 La. An. 394; *People v. Auditor*, 7 Mich. 84; *Camden &c. R. R. Co. v. Commissioners*, 18 N. J. 71; *State v. Berry*, 17 N. J. 81; *Gardner v. State*, 21 N. J. 557; *Matheny v. Golden*, 5 Ohio St. 361; *State v. Auditor*, 5 Ohio St. 444; *Ross Co. Bank v. Lewis*, 5 Ohio St. 447. But see *Toledo Bank v. Bond*, 1 Ohio St. 622; *Norwalk Co. v. Husted*, 3 Ohio St. 586; *Exchange Bank v. Hines*, 3 Ohio St. 1; *Milan &c. Co. v. Husted*, 3 Ohio St. 578; *Sandusky Bank v. Wilson*, 17 Ohio St. 48; *Tenn. & Coosa R. R. Co. v. Moore*, 36 Ala. 371.

5 *Thornton v. Hooper*, 14 Cal. 9.

6 *Ohio Trust Co. v. Debolt*, 16 How. 416; 1 Ohio St. 563.

7 *Commonwealth v. Bird*, 12 Mass. 443; *People v. Roper*, 35 N. Y. 629.

8 *Corning v. Greene*, 23 Barb. 33; *State v. Dews, R. M. Charl.* 397; *People v. Roper*, 35 N. Y. 629.

9 *In re Lawrence*, 5 N. Y. Sup. 310.

10 *Butler v. Pennsylvania*, 10 How. 402.

11 *Butler v. Pennsylvania*, 10 How. 402; *Barker v. Pittsburgh*, 4 Pa. St. 49; *Commonwealth v. Bacon*, 6 Serg. & R. 322; *Jones v. Shaw*, 15 Tex. 577; *Commonwealth v. Mann*, 5 Watts & S. 418; *Benford v. Gibson*, 15 Ala. 521; *Coffin v. State*, 7 Ind. 157; *Haynes v. State*, 3 Ohio, 490; *Swann v. Buck*, 40 Miss. 268; *State v. Smedes*, 26 Miss. 47; *Connor v. N. Y.* 2 Sand. 355; 1 Seld. 295; *State v. Dews, R. M. Charl.* 397; *People v. Lipincott*, 67 Ill. 333.

12 *Warner v. People*, 2 Denio, 272.

13 *Dartmouth Coll. v. Woodward*, 4 Wheat. 693; *West Riv. Br. Co. v. Dix*, 6 How. 548; *Butler v. Pennsylvania*, 10 How. 402; *Connor v. N. Y.* 1 Seld. 295; 2 Sandf. 355; *Knoup v. Piqua Bank*, 1 Ohio St. 616; *Toledo Bank v. Bond*, 1 Ohio St. 655.

14 *Bedford v. Gibson*, 15 Ala. 521; *People v. Auditor*, 2 Ill. 537; *Barker v. Pittsburgh*, 4 Pa. St. 49; *State v. Dews, R. M. Charl.* 397; *Connor v. New York*, 2 Sandf. 355; 1 Seld. 295; *Knoup v. Piqua Br. Bank*, 1 Ohio St. 616; *Toledo Bank v. Bond*, *Ibid.* 655; *Butler v. Pennsylvania*, 10 How. 418; *Commonwealth v. Mann*, 5 Watts & S. 403; *Kilgore v. Magee*, 85 Pa. St. 491.

15 *Turpen v. Commissioners*, 7 Ind. 172.

16 *Augusta v. Sweeny*, 44 Ga. 463; *Iowa City v. Foster*, 10 Iowa, 189; *Commonwealth v. Bacon*, 6 Serg. & R. 322.

17 *Head v. University*, 19 Wall. 526; 47 Mo. 220.

18 *Trustees v. Rider*, 13 Conn. 87; *Swann v. Buck*, 40 Miss. 268.

19 *Dale v. Governor*, 3 Stewt. 387.

20 *Salt Co. v. East Saginaw*, 13 Wall. 373; 19 Mich. 259; *People v. Auditor*, 9 Mich. 327.

**Contracts with State.** — The privilege of payment for land sold by the State cannot be taken away by a subsequent statute.<sup>1</sup> Where the State gives a contract for printing to one person, it cannot make a subsequent contract with another person for the same work.<sup>2</sup> A statute providing for the discontinuance of work on a public building, under contract, is valid; the remedy for damages for breach of the contract remains.<sup>3</sup> The instrument pledging public faith may be either in terms a contract or a mere legislative enactment.<sup>4</sup> Where a statute pledges certain property for the payment of certain debts of a

municipal corporation, a subsequent statute may change the mode of sale of such property.<sup>5</sup> But if the legislature pledges certain property to secure bonds, it cannot subsequently divest the lien or postpone it.<sup>6</sup> A statute that coupons of State bonds shall be receivable for taxes and all debts due the State is a contract.<sup>7</sup> If a statute authorize the sale of stock held by the State, the State cannot repeal the law, and deprive purchasers of the means of enforcing the contract.<sup>8</sup> A statute which declares all debts incurred by the State in aid of the Rebellion void is valid.<sup>9</sup> But a law in violation of a compact between States is unconstitutional.<sup>10</sup> A statute by which the State waives the privilege of sovereignty, and permits itself to be sued, is not a contract.<sup>11</sup> Where there is no legal remedy to enforce a contract against a State, a statute forbidding the auditor to issue a warrant does not violate the obligation of the contract.<sup>12</sup>

1 *Damman v. Commissioners*, 4 Wis. 414.

2 *State v. Barker*, 4 Kans. 379.

3 *Lord v. Thomas*, 64 N. Y. 107.

4 *Bridge Prop. v. Hoboken &c. Co.* 1 Wall. 116.

5 *Babcock v. Middleton*, 20 Cal. 643.

6 *Trustees v. Beers*, 2 Black. 448.

7 *Antone v. Wright*, 23 Gratt. 833.

8 *Baldwin v. Commissioners*, 11 Bush, 417.

9 *Leak v. Commissioners*, 64 N. C. 132.

10 *Green v. Biddle*, 8 Wheat. 1; *Von Hoffman v. Quincy*, 4 Wall. 535.

11 *Beers v. State*, 20 How. 527; *Bank of Washington v. State*, 20 How. 530; *Platenius v. State*, 17 Ark. 518.

12 *Swann v. Buck*, 40 Miss. 268.

**Obligation of contract.**—The obligation of a contract is that which requires the performance of the legal duties imposed by it,<sup>1</sup> and consists of that right or power over his will or actions which a party by his contract confers on another,<sup>2</sup> and includes everything within its object and scope.<sup>3</sup> It does not inhere and consist in the contract itself, but in the law applicable to the contract.<sup>4</sup> Laws relating to the validity, construction, discharge, and enforcement are part of the contract.<sup>5</sup> The obligation consists in the binding force on the party who makes the contract, and that depends on the laws in existence when it is made.<sup>6</sup> The obligation of other things than contracts is not protected.<sup>7</sup> The obligation of a contract commences at its date,<sup>8</sup> and continues until the debt is paid or the act performed.<sup>9</sup> It extends to future possessions.<sup>10</sup> The validity, construction, and remedy are parts of the

obligation.<sup>11</sup> Contracts made in the Confederate States, not in aid of the Rebellion, and payable in Confederate currency, are not therefore void.<sup>12</sup> See *post*, 304.

1 Blann *v.* State, 39 Ala. 353.

2 Ogden *v.* Saunders, 12 Wheat. 213; Lapsley *v.* Brashears, 4 Litt. 47.

3 Edwards *v.* Kearzey, 96 U. S. 601.

4 Ogden *v.* Saunders, 12 Wheat. 353; Sturges *v.* Crowninshield, 4 Wheat. 122; Bronson *v.* Kinzie, 1 How. 311; McCracken *v.* Hayward, 2 How. 603; Blair *v.* Williams, 4 Litt. 34; Lapsley *v.* Brashears, 4 Litt. 47; Blanchard *v.* Russell, 13 Mass. 1; Edwards *v.* Kearzey, 6 Am. L. R. 239.

5 Edwards *v.* Kearzey, 96 U. S. 601; 6 Am. La. & Reg. 289; Von Hoffman *v.* Quincy, 4 Wall. 535; McCracken *v.* Hayward, 2 How. 608.

6 Sturges *v.* Crowninshield, 4 Wheat. 122; Ogden *v.* Saunders, 12 Wheat. 213; McCracken *v.* Hayward, 2 How. 603; Robinson *v.* Magee, 9 Cal. 84; Johnson *v.* Duncan, 3 Mart. 531; Western Sav. Fund *v.* Philadelphia, 31 Pa. St. 175; Wood *v.* Wood, 14 Rich. 143; Smith *v.* Cleveland, 17 Wis. 556.

7 Ogden *v.* Saunders, 12 Wheat. 213; Robinson *v.* Magee, 9 Cal. 84; Blair *v.* Williams, 4 Litt. 34.

8 Blair *v.* Williams, 4 Litt. 34.

9 Baily *v.* Gentry, 1 Mo. 164; Forsyth *v.* Marbury, R. M. Charl. 324.

10 Edwards *v.* Kearzey, 96 U. S. 600; 6 Am. Law Reg. 239.

11 Green *v.* Biddle, 8 Wheat. 1; Ogden *v.* Saunders, 12 Wheat. 213; Bronson *v.* Kinzie, 1 How. 311; McCracken *v.* Hayward, 2 How. 608; Von Hoffman *v.* Quincy, 4 Wall. 535; People *v.* Bond, 10 Cal. 570; Story *v.* Furman, 25 N. Y. 223; Walker *v.* Whitehead, 16 Wall. 314.

12 Thorington *v.* Smith, 8 Wall. 1; Hanauer *v.* Woodruff, 15 Wall. 439; Confederate Note Case, 19 Wall. 548; Wilmington & C. R. R. Co. *v.* King, 91 U. S. 3. See Supplement, *post*, 330.

**Impairment of obligation.**—To *impair* means to alter so as to make the contract more beneficial to one party and less to the other than by its terms it purports to be.<sup>1</sup> So, the discharge of a contract is an actual impairment of the obligation;<sup>2</sup> or where the contract is destroyed;<sup>3</sup> or where an essential part is annulled,<sup>4</sup> or partially rescinded.<sup>5</sup> The time, place, person, or thing to be done cannot be changed.<sup>6</sup> So, the obligation is impaired by a statute which authorizes a discharge of the contract by a smaller sum, or at a different time, or in a different manner than stipulated,<sup>7</sup> as the alteration of the terms of a condition of a mortgage.<sup>8</sup> Any means which lessens the validity gives diminished value, or which divests priority of lien, obligation, or recovery, violates the obligation,<sup>9</sup> or anything which affects its validity,<sup>10</sup> as where the obligation is diminished, weakened, or rendered less operative.<sup>11</sup> A statute which releases one party from any article of a stipulation is a violation of the obligation.<sup>12</sup> as releasing a sheriff and sureties from liability on an official bond,<sup>13</sup> or a release of sureties on a bail-bond after condi-

tion broken, and assignment of the bond to the creditor.<sup>14</sup> The sureties on an official bond cannot be made liable for his failure to discharge the duties of an additional office imposed by a subsequent act.<sup>15</sup> A statute releasing future acquisitions from liability,<sup>16</sup> or releasing a tenant from his liability for rent, is void.<sup>17</sup> A statute which declares that a certain consideration shall be deemed void is invalid.<sup>18</sup> A statute declaring that a contract made during the war, the consideration whereof was slaves, is void, impairs the obligation of the contract;<sup>19</sup> or which declares the consideration of Confederate money, notes, or bonds to be void.<sup>20</sup> The validity of a contract may be affected by a subsequent statute of frauds.<sup>21</sup>

See Supplement, *post*, 305.

- 1 Bailey v. Gentry, 1 Mo. 164.
- 2 Farmers and Mechanics' Bank v. Smith, 6 Wheat. 131.
- 3 Robinson v. Magee, 9 Cal. 84.
- 4 New Jersey v. Wilson, 7 Cranch, 164.
- 5 Grimbail v. Ross, Charl. 175.
- 6 Townsend v. Townsend, Peck, (Tenn.) 1.
- 7 Golden v. Prince, 5 Hall L. J. 502; 3 Wash. C. C. 313; Edmondson v. Ferguson, 11 Mo. 344.
- 8 Bronson v. Kinzie, 1 How. 311; Pool v. Young, 7 Mon. 587.
- 9 Grimbail v. Ross, Charl. 175.
- 10 Edwards v. Kearzey, 96 U. S. 595; Planters' Bank v. Sherry, 6 How. 301; 4 Smedes & M. 17.
- 11 Lapsley v. Brashears, 4 Litt. 47; Nevitt v. Bank, 14 Miss. 513.
- 12 Jones v. Crittenden, 1 Car. Law Rep. 385; Pool v. Young, 7 Mon. 587; Townsend v. Townsend, Peck, (Tenn.) 1; Greenfield v. Dorris, 1 Sneed, 548.
- 13 State v. Gatzweiler, 49 Mo. 18.
- 14 Lewis v. Breckinridge, 1 Blackf. 220; Starr v. Robinson, 1 Chip. 257.
- 15 Reynolds v. Hall, 2 Ill. 35.
- 16 Sturges v. Crowninshield, 4 Wheat. 122.
- 17 Clark v. Ticknor, 49 Mo. 144.
- 18 McNealy v. Gregory, 13 Fla. 417.
- 19 Osborn v. Nicholson, 13 Wall. 654; 1 Dill. 219; Boyce v. Tabb, 18 Wall. 546; McElvain v. Mudd, 44 Ala. 48; Fitzpatrick v. Hearne, 44 Ala. 171; Curry v. Davis, 44 Ala. 281; Roach v. Gunter, 44 Ala. 209.
- 20 Delmas v. Ins. Co. 14 Wall. 661; Forscheimer v. Holly, 14 Fla. 239; Roach v. Gunter, 44 Ala. 209; Hatch v. Burroughs, 1 Woods, 439; Marsh v. Burroughs, 1 Woods, 463.
- 21 Von Hoffman v. Quincy, 4 Wall. 535.

**Degree of impairment.** — A contract cannot be impaired in the remotest degree.<sup>1</sup> It is not a question of degree, manner, or cause.<sup>2</sup> But any deviation, by postponement or acceleration of the period of performance, or imposing conditions not expressed, or dispensing with those expressed, is a violation of the obligation,<sup>3</sup> as compelling a party to do more than he has promised, or enforcing payment before the debt becomes due,<sup>4</sup> or authorizing the sale of property free from incumbrance before the maturity of the mortgage,<sup>5</sup> or providing that all contracts shall be payable in installments,<sup>6</sup> or changing a joint bond into a several,<sup>7</sup> or attempting to deprive a creditor of interest on an overdue debt,<sup>8</sup> or requiring interest on a debt which did not bear interest,<sup>9</sup> or requiring a higher rate than that allowed at the time,<sup>10</sup> or allowing recovery of damages in addition to interest,<sup>11</sup> or authorizing a party to surrender property in full discharge of indebtedness,<sup>12</sup> or providing that indorsers shall be bound without demand, notice, or protest,<sup>13</sup> but not a statute changing the mode of giving notice and making protest.<sup>14</sup> A law providing that all future contracts shall be subject to the power of future legislatures is void.<sup>15</sup> A declaratory, like any other act, may be unconstitutional.<sup>16</sup> Any act of the legislature in contravention of a compact is an impairment of the obligation of a contract.<sup>17</sup>

1 *Green v. Biddle*, 8 Wheat. 1; *Von Hoffman v. Quincy*, 4 Wall. 535.

2 *Sturges v. Crowninshield*, 4 Wheat. 122; *Green v. Biddle*, 8 Wheat. 1; *Planters' Bank v. Sharp*, 6 How. 301; 12 Miss. 17; *Walker v. Whitehead*, 16 Wall. 314; 43 Ga. 537; *Von Hoffman v. Quincy*, 4 Wall. 535; *Gault's Appeal*, 33 Pa. St. 184; *Farnsworth v. Reeves*, 2 Cold. 111; *Winter v. Jones*, 10 Ga. 190.

3 *Green v. Biddle*, 8 Wheat. 1; *McCracken v. Hayward*, 2 How. 608; *People v. Bond*, 10 Cal. 563; *Winter v. Jones*, 10 Ga. 190; *Blanchard v. Russell*, 13 Mass. 1; *Commercial Bank v. State*, 12 Miss. 439; *West Riv. Br. Co. v. Dix*, 6 How. 507; 16 Vt. 446; *McCauley v. Brooks*, 16 Cal. 11.

4 *Jones v. Crittenden*, 1 Car. L. Repos. 385; *Townsend v. Townsend*, Peck Tenn. 1.

5 *Randolph v. Middleton*, 26 N. J. Eq. 543.

6 *Aycock v. Martin*, 37 Ga. 124; *Jacobs v. Smallwood*, 63 N. C. 112.

7 *Flelden v. Lahens*, 6 Blatchf. 524.

8 *Bleakley v. Williams*, 20 Pitts. L. J. 66.

9 *Goggins v. Turnipseed*, 1 Rich. N. S. 80.

10 *Woodruff v. State*, 3 Ark. 285; *Hubbard v. Callahan*, 42 Conn. 524; *Lee v. Davis*, 1 A. K. Marsh. 397; *Bryan v. Moore*, 1 Minn. 377.

11 *Steen v. Finley*, 25 Miss. 535.

12 *Abercrombie v. Baxter*, 44 Ga. 36.

13 *Farmers' Bank v. Gunnell*, 26 Gratt. 131.

14 *Levering v. Washington*, 3 Minn. 323; *Grymes v. Byrne*, 2 Minn. 87.

15 *Goenen v. Schroeder*, 8 Minn. 387.

16 *Dundas v. Bowler*, 3 McLean, 397; *Union Iron Co. v. Pierce*, 4 Blss. 327.

17 *Green v. Biddle*, 8 Wheat. 1; *Pennsylvania v. Wheeling &c. Br. Co.* 18 How. 433.

**What not a violation of obligation.**—It is not every law affecting the validity of a contract which impairs its obligation.<sup>1</sup> States may pass laws validating contracts.<sup>2</sup> So, a law which gives validity to a void contract does not impair the obligation of that contract,<sup>3</sup> as a law declaring a contract founded on an illegal or immoral consideration as valid and binding,<sup>4</sup> or validating bonds illegally issued,<sup>5</sup> or altering the Statute of Frauds and giving validity to a contract,<sup>6</sup> or making previous payments of usurious interest valid,<sup>7</sup> or permitting the enforcement of a usurious contract, although it applies to a prior contract,<sup>8</sup> or prohibiting recovery of interest when not expressly stipulated in the contract,<sup>9</sup> or rendering a judgment valid.<sup>10</sup> A repeal of a statute is no more void than a new law would be which would operate on the contract to affect its validity, construction, or duration, but it cannot affect past contracts.<sup>11</sup> A statute may repeal a statute under which a contract was illegal, and authorize suit thereon,<sup>12</sup> as the repeal of a statute prohibiting stock-jobbing.<sup>13</sup> States may pass retrospective laws that will divest antecedent rights if they do not technically impair the obligation of contracts.<sup>14</sup> See Supplement, *post*, 307.

1 *Curtis v. Whitney*, 13 Wall. 68.

2 *Welsh v. Wadsworth*, 30 Conn. 154; *Mather v. Chapman*, 6 Cowen, 57.

3 *Satterlee v. Matthewson*, 2 Peters, 330; *Hess v. Werts*, 4 Serg. & R. 356; *Bleakney v. Farmers' Bank*, 17 Serg. & R. 64; *Bridgeport v. Railroad Co.* 15 Conn. 475; *Central Bank v. Empire S. D. Co.* 26 Barb. 23.

4 *Satterlee v. Matthewson*, 2 Peters, 412; *Curran v. Arkansas*, 15 How. 304; *Aspinwall v. Commissioners*, 22 How. 365.

5 *Kunkle v. Franklin*, 13 Minn. 127; *Comer v. Folsom*, 13 Minn. 219.

6 *Baker v. Herndon*, 17 Ga. 568.

7 *Sparks v. Clapper*, 30 Ind. 204.

8 *Woodruff v. Scruggs*, 27 Ark. 26; *Grimes v. Doe*, 8 Blackf. 371; *Andrews v. Russell*, 7 Blackf. 474; *Savings Bank v. Bates*, 8 Conn. 505; *Savings Bank v. Allen*, 23 Conn. 97; *Welsh v. Wadsworth*, 30 Conn. 149; *Baughner v. Nelson*, 9 Gill, 239; *Town v. Peace*, 25 Gratt. 1; *Wood v. Kennedy*, 19 Ind. 63; *Wilson v. Hardesty*, 1 Md. Ch. 66; *Curtis v. Leavitt*, 15 N. Y. 9. *Contra*, *Morton v. Rutherford*, 13 Wis. 298.

9 *Harmanson v. Wilson*, 14 Amer. L. Reg. 627.

10 *Tilton v. Swift*, 40 Iowa, 78; *Underwood v. Lilly*, 10 Serg. & R. 97.

11 *Ogden v. Saunders*, 9 Wheat. 1; *Atwater v. Woodbridge*, 6 Conn. 223; *Osborne v. Humphreys*, 7 Conn. 335; *Landon v. Litchfield*, 11 Conn. 251.



12 *Milne v. Huber*, 3 McLean, 212; *Hill v. Smith, Morris*, 70; *Johnson v. Bently*, 16 Ohio, 97; *Lewis v. McElvain*, 16 Ohio, 347. And see *Barrings v. Dabney*, 19 Wall. 1; *Van Horne v. Derrance*, 2 Dall. 204; *Walker v. Tipton*, 3 Dana, 3.

13 *Washburn v. Franklin*, 35 Barb. 599.

14 *Calder v. Bull*, 3 Dall. 386; *Watson v. Mercer*, 8 Peters, 88; *Balt. &c. R. R. v. Nesbit*, 10 How. 395; *Satterlee v. Matthewson*, 2 Peters, 380; 16 Serg. & R. 191; *Lewis v. Lewis*, 7 How. 784; *Charles Riv. Br. v. Warren Br.* 11 Peters, 420; 23 Mass. 422; 24 Mass. 344; *Cochran v. Van Surlay*, 20 Wend. 365; *Towle v. Forney*, 4 Duer, 164.

**What not a violation of obligation.**—A legislature may enact such laws as may have for their object the application to public use of the property of any member of the community,<sup>1</sup> when a fair and just equivalent is awarded to the owner.<sup>2</sup> A law passed before the contract is made cannot impair its obligation.<sup>3</sup> So, a law may prohibit making a contract of a certain kind.<sup>4</sup> If a party, by a statute, is not precluded from asserting a title or enforcing a right, it is not a violation of the obligation of contracts.<sup>5</sup> So, a statute requiring an oath of loyalty from an attorney is not an impairment of the obligation of a contract.<sup>6</sup> Days of grace are no part of the original contract, and a State may legislate on the subject.<sup>7</sup> A law may be good in part and bad in part; it may be bad as to past, and good as to future contracts.<sup>8</sup> The power to pass curative acts to legalize proceedings depends on the power to authorize such proceedings.<sup>9</sup> A State may cure an irregularity or want of authority in the levy of a tax,<sup>10</sup> or may provide for the validation of marriages,<sup>11</sup> or may cure irregularities in conveyances.<sup>12</sup> Supplement, *post*, 307.

1 *Young v. McKenzie*, 3 Ga. 31; *Jackson v. Winn*, 4 Litt. 323; *Beekman v. Railroad*, 3 Paige, 45; *Bloodgood v. Railroad Co.* 18 Wend. 9.

2 *People v. Platt*, 17 Johns. 195; *Bonaparte v. Camden &c. Co.* 1 Bald. 220.

3 *Bronson v. Kinzie*, 1 How. 311; *Moore v. Fowler*, Hemp. 536; *Blair v. Williams*, 4 Litt. 34; *Roby v. Boswell*, 23 Ga. 51; *Powers v. Dougherty*, *Ibid.* 65; *Sparrow v. Railroad Co.* 7 Ind. 360; *Davis v. Bronson*, 6 Iowa, 410; *Bruns v. Crawford*, 34 Mo. 330; *Edwards v. Kearzy*, 96 U. S. 600; 6 Amer. L. R. 289.

4 *Churchman v. Martin*, 54 Ind. 330.

5 *Drehman v. Stifle*, 8 Wall. 595.

6 *State v. Garesche*, 36 Mo. 256.

7 *Barlow v. Gregory*, 31 Conn. 263.

8 *Ogden v. Saunders*, 12 Wheat. 213; 4 Johns. Ch. 150; *Berry v. Haines*, 2 Caro. L. R. 428; *Commonwealth v. Kimball*, 41 Mass. 359; *Norris v. Boston*, 45 Mass. 282; *Stato v. Paul*, 5 R. I. 185; *Barry v. Isenman*, 14 Rich. 129; *State v. Newton*, 59 Ind. 173.

9 *Kimball v. Rosendale*, 42 Wis. 407.

10 *Grim v. Weissenberg Sch. Dist.* 57 Pa. St. 433.

11 *Jacqueline v. Commonwealth*, 63 Mass. 282; *Goshen v. Richmond*, 54 Mass. 461.

12 *Thompson v. Morgan*, 6 Minn. 292.

**Impairment of remedy.**—The remedy enters into and forms a material part of the obligation of the contract.<sup>1</sup> The validity and remedy of a contract are inseparable; both are parts of the obligation,<sup>2</sup> and a statute impairing the remedy is prohibited.<sup>3</sup> The obligation of the contract is the duty of performing it; and if the law is so changed that the means of enforcing it are materially impaired, the obligation of the contract no longer remains the same.<sup>4</sup> A statute can no more impair the efficacy of a contract by changing the remedy than attack its vitality in any other way.<sup>5</sup> A party has a right at all times to some adequate and available remedy.<sup>6</sup> Where the legal obligation is diminished, suspended, or destroyed by relaxing or abolishing the legal remedy, the obligation is impaired,<sup>7</sup> so by burdening the proceedings with new conditions or restrictions,<sup>8</sup> or by taking away the remedy;<sup>9</sup> but a State may abolish one of two remedies,<sup>10</sup> as imprisonment for debt, both as to present and future punishment,<sup>10</sup> and in time of war and other controlling circumstances the remedy may be entirely suspended.<sup>11</sup> Where the remedy is essential to the contract, the legislature cannot take it away.<sup>12</sup> See Supplement, *post*, 309.

1 *Von Hoffman v. Quincy*, 4 Wall. 535; *Walker v. Whitehead*, 16 Wall. 314; 43 Ga. 537; *Gunn v. Barry*, 15 Wall. 610; 8 Bank. Reg. 1; *Johnson v. Higgins*, 3 Met. (Ky.) 566.

2 *Walker v. Whitehead*, 16 Wall. 314; 43 Ga. 537; *Von Hoffman v. Quincy*, 4 Wall. 535; *Scaine v. Belleville*, 39 N. J. 10; *Vroom*, 526.

3 *Bronson v. Kinzie*, 1 How. 311; *Green v. Biddle*, 8 Wheat. 1; *Smith v. Morse*, 2 Cal. 524; *Johnson v. Duncan*, 3 Mart. 531; *Coffman v. Bank*, 40 Miss. 29.

4 *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 612; *Grantly v. Ewing*, 3 How. 717; *Curran v. Arkansas*, 15 How. 304; *Butz v. Muscatine*, 8 Wall. 583; *Walker v. Whitehead*, 16 Wall. 314; *Olcott v. Supervisors*, 10 Wall. 678; *Gunn v. Barry*, 15 Wall. 623; *Jackson v. Lamphire*, 3 Peters, 280; *Green v. Biddle*, 8 Wheat. 1; *Edwards v. Kearzey*, 36 U. S. 601; *Taylor v. Stearns*, 18 Gratt. 244; *Nevitt v. Bank*, 14 Miss. 513; *Von Baumbach v. Bade*, 9 Wis. 559.

5 *Walker v. Whitehead*, 16 Wall. 314; 43 Ga. 537.

6 *Coffman v. Bank*, 40 Miss. 29; ; and an act denying all remedy is unconstitutional—*West v. Sansom*, 44 Ga. 295.

7 *Lapsley v. Brashears*, 4 Litt. 27; *McCracken v. Hayward*, 2 How. 612.

8 *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 612; *Riggs v. Martin*, 5 Ark. 503; *Curran v. Arkansas*, 15 How. 304; 11 Ark. 321; *Mundy v. Monroe*, 1 Mich. 68; *Commercial Bank v. Chambers*, 16 Miss. 9; *Penrose v. Reed*, 2 Grant, 472; *West. Sav. Fund v. Philadelphia*, 31 Pa. St. 175; *Patman v. Bond*, 15 Wis. 20.

9 *Woodruff v. Trapnall*, 10 How. 190; *Richmond R. R. Co. v. Louisville R. R. Co.* 13 How. 71; *Binghampton Br. Case*, 3 Wall. 51; *East Hartford v. Hartford Br. Co.* 10 How. 535; 17 Conn. 78; *Boston &c. R. R. Co. v. Salem &c. R. R. Co.* 2 Gray, 1; *Piscataqua Br. Co. v. New Haven Br.* 7 N. H. 35; *Brewster v. Hough*, 10 N. H. 138; *Johnson v. Duncan*, 3 Mart. 531.

10 *Mason v. Halle*, 12 Wheat. 370; *Beers v. Haughton*, 9 Peters, 359; *Butz v. Muscatine*, 8 Wall. 575; *Sturges v. Crowninshield*, 4 Wheat. 122; *Von Hoffman v. Quiney*, 4 Wall. 585; *Society for Prop. Gosp. v. Wheeler*, 2 Gall. 141; *Gray v. Munroe*, 1 McLean, 528; *Newton v. Tibbatts*, 7 Ark. 150; *Fisher v. Lacky*, 6 Blackf. 373; *Robinson v. Magee*, 9 Cal. 81; *People v. Carpenter*, 46 Barb. 613; *Bronson v. Newberry*, 2 Doug. (Mich.) 38; *Mercer's Case*, 4 Harring. 248; *Woodfin v. Hooper*, 4 Humph. 13; *Mundy v. Monroe*, 1 Mann. 68; *Kennebec Land Co. v. Laboree*, 2 Me. 234; *Oriental Bank v. Freeze*, 18 Me. 109; *Call v. Hagger*, 8 Mass. 429; *Brown v. Dellahunty*, 12 Miss. 713; *Donnelly v. Corbett*, 7 N. Y. 500; *Sommers v. Johnson*, 4 Vt. 276; *Conkey v. Hart*, 14 N. Y. 22; *Petition of Penniman*, 11 R. I. 333; *Watts v. Everett*, 47 Iowa, 263.

11 *Johnson v. Duncan*, 3 Mart. 531; *Ex parte Pollard*, 40 Ala. 77.

12 *Thompson v. Commonwealth*, 81 Pa. St. 314.

**Change of remedy.**—A violation of the obligation is not necessarily implied by a reasonable change in the mode of enforcing the contract.<sup>1</sup> Unless it substantially lessens the rights of the creditors<sup>2</sup> the change must reach the intent of the parties.<sup>3</sup> A mere change in one of two remedies does not impair the obligation.<sup>4</sup> So, mere incidental delay, following from a general law, does not impair the remedy.<sup>5</sup> A statute may prescribe a remedy, if there be none; and if a remedy given be as good as that taken away, the obligation is not impaired.<sup>6</sup> States may pass remedial laws which are retrospective,<sup>7</sup> but not such as impair vested rights, or create personal liabilities, or impose new obligations or duties.<sup>8</sup> A legislature may alter, modify, or even take away a remedy,<sup>9</sup> or give a remedy not already existing,<sup>10</sup> although the new remedy may be less convenient, or more tardy or difficult,<sup>11</sup> or may change the remedy from equity to law, or vice versa.<sup>12</sup> If a contract in its inception was without legal remedy, the legislature may repeal a statute subsequently passed providing a remedy.<sup>13</sup> So long as contracts are submitted to the ordinary and regular course of justice, and existing remedies are preserved in substance, the obligation of the contract is not impaired.<sup>14</sup> A mere change in the remedy is not unconstitutional.<sup>15</sup> A statute may change the remedies that are used before judgment, but not those after judgment, so as to materially affect the rights under the contract;<sup>16</sup> but if the change materially affects rights and interests it is so far a violation of the compact.<sup>17</sup> A State legislature may regulate the remedy and mode of pro-

ceeding, of past as well as future contracts, but not so as to take away all remedy.<sup>18</sup> See Supplement, *post*, 302.

1 *Mason v. Halle*, 12 Wheat. 310; *Templeton v. Horne*, 32 Ill. 491; *Rader v. S. E. Road Dist.* 37 N. J. (8 Vroom), 273; *Baldwin v. Newark*, 38 N. J. (9 Vroom) 160; *Bullings v. Riggs*, 56 Ill. 433.

2 *Bronson v. Kinzie*, 1 How. 311; *Sturges v. Crowninshield*, 4 Wheat. 123; *Woodruff v. Trapnall*, 10 How. 190; *Hawthorne v. Calef*, 2 Wall. 10; *Walker v. Whitehead*, 16 Wall. 314; *Green v. Biddle*, 8 Wheat. 1; *Curran v. Arkansas*, 15 How. 319; *Roberts v. Cocke*, 28 Gratt. 207.

3 *Commercial Bank v. State*, 12 Miss. 430.

4 *Heyward v. Judd*, 4 Minn. 433; *Watts v. Everett*, 47 Iowa, 269.

5 *Rathbone v. Bradford*, 1 Ala. 312; *Jones v. Crittenden*, 1 Car. Law Rep. 335; *Townsend v. Townsend*, Peck, (Tenn.) 1; *Wood v. Wood*, 14 Rich. 143.

6 *Mason v. Halle*, 12 Wheat. 370; *Milno v. Huber*, 3 McLean, 212; *Brandon v. Gaines*, 7 Humph. 130; *Simmons v. Hanover*, 40 Mass. 168; *Commercial Bank v. State*, 12 Miss. 430; *Wheat v. State*, Minor, 109; *Anonymous*, 2 Stewt. 228; *Bronson v. Kinzie*, 1 How. 311; *Davis v. Ballard*, 1 J. J. Marsh. 563; *McMillan v. Sprague*, 4 How. (Miss.) 647; *Lapsley v. Brashears*, 4 Litt. 47; *Townsend v. Townsend*, Peck, (Tenn.) 1; *Sav. Inst. v. Makin*, 23 Mo. 360; *Commercial Bank v. State*, 12 Miss. 430; *Longfellow v. Patrick*, 25 Mo. 11; *Van Rensselaer v. Snyder*, 13 N. Y. 249; *In re Trust*, Pub. Sch. 31 N. Y. 574; *Morse v. Gould*, 11 N. Y. 281; *Pratt v. Jones*, 25 Vt. 303.

7 *Freeborn v. Smith*, 2 Wall. 175; *Foster v. Essex Bank*, 13 Mass. 246; *Rich v. Flanders*, 39 N. H. 304; *Searcy v. Stubbs*, 12 Ga. 437; *Johnson v. Roockogy*, 23 Ga. 183.

8 *Brandon v. Green*, 7 Humph. 130; *Rich v. Flanders*, 39 N. H. 304; *DeCordova v. Galveston*, 4 Tex. 470; *Hopv v. Johnson*, 2 Yerg. 125; *Vanzandt v. Waddell*, 2 Yerg. 260; *Coffin v. Rich*, 45 Me. 307; *Kennebec Purch. v. Laboree*, 2 Me. 275.

10 *Freeborn v. Smith*, 2 Wall. 175; *Foster v. Essex Bank*, 13 Mass. 245; *Rich v. Flanders*, 39 N. H. 325; *Schenley v. Commonwealth*, 30 Pa. St. 57; *Hepburn v. Curtis*, 7 Watts, 300; *Wheat v. State*, Minor, 109; *Anonymous*, 3 Stew. 228; *Blann v. State*, 39 Ala. 353.

11 *Bronson v. Kinzie*, 1 How. 311; *Guild v. Rogers*, 8 Barb. 502.

12 *Paschal v. Whitcell*, 11 Ala. 472; *Bethune v. Dougherty*, 30 Ga. 770; *Baughner v. Nelson*, 9 Gill, 26; *Bartlett v. Lang*, 2 Ala. 491.

13 *Young v. Oregon*, 1 Oreg. 213.

14 *Holmes v. Lansing*, 3 Johns. Cas. 73.

15 *Morse v. Gould*, 11 N. Y. 281; *Jones v. Davis*, 6 Neb. 33; *Richardson v. Akin*, 87 Ill. 141; *Templeton v. Horne*, 82 Ill. 491; *Jones v. Davis*, 6 Neb. 33; *Cox v. Berry*, 13 Ga. 306; *Bronson v. Kinzie*, 1 How. 311; *Woodruff v. Trapnall*, 10 How. 190; *Hawthorne v. Calef*, 2 Wall. 10.

16 *Oliver v. McClure*, 28 Ark. 555; *Woods v. Bule*, 5 How. (Miss.) 285; *Lockett v. Usry*, 23 Ga. 345; *Read v. Frankfort Bank*, 23 Me. 318; *Oriental Bank v. Freeze*, 18 Me. 109.

17 *Green v. Biddle*, 8 Wheat. 1; *Von Hoffman v. Quincy*, 4 Wall. 535; *Billings v. Riggs*, 56 Ill. 433.

18 *Ex parte Pollard*, 40 Ala. 77.

**What not an impairment of remedy.**—A statute may take away the remedy by attachment,<sup>1</sup> or may allow amendment in attachment suits.<sup>2</sup> Attachment laws do not impair the obligation of contracts between the garnishee and the debtor.<sup>3</sup> A statute authorizing attachments may apply to actions before its passage.<sup>4</sup> A statute may abolish distress for rent,<sup>5</sup> or conform a defective levy and sale under an execution,<sup>6</sup> or mitigate the severity of the penalty on bonds,<sup>7</sup> or may extend the time for advertisement of mortgage sales,<sup>8</sup> or diminish the period for publication of a notice of foreclosure,<sup>9</sup> or may change the remedy on a judgment,<sup>10</sup> or the remedy on the enforcement of forfeiture of a charter.<sup>11</sup> Where a deed of trust authorizes a trustee, upon a default in paying certain notes, to sell the property, the sale cannot be suspended for a fixed term.<sup>12</sup> See Supplement, *post*, 303.

1 *Darnley v. State Bank*, 15 Ark. 16; *Krebs v. State Bank*, 15 Ark. 19; *Allis v. State Bank*, 15 Ark. 19; *Leathers v. Shipbuilders' Bank*, 40 Me. 386; *Bigelow v. Pritchard*, 38 Mass. 169.

2 *Knight v. Dorr*, 36 Mass. 43.

3 *Philbrick v. Philbrick*, 39 N. H. 468; *Klaus v. City*, 34 Wis. 628.

4 *Coosa River S. Co. v. Barclay*, 30 Ala. 120.

5 *Conkey v. Hart*, 14 N. Y. 22; *Van Rensselaer v. Snyder*, 13 N. Y. 299; *Gould v. Rogers*, 8 Barb. 502.

6 *Mather v. Chapman*, 6 Conn. 54; *Beach v. Walker*, 6 Conn. 190; *Norton v. Pettibone*, 7 Conn. 319; *Booth v. Booth*, 7 Conn. 350; *Menges v. Wertman*, 1 Pa. St. 218; *Bell v. Roberts*, 13 Vt. 582; *Selsby v. Redlon*, 19 Wis. 17.

7 *Wood v. Kennedy*, 19 Ind. 68; *Potter v. Sturdevant*, 4 Me. 154.

8 *Von Baumbach v. Bade*, 9 Wis. 559; *Starkweather v. Hawes*, 10 Wis. 125.

9 *Hopkins v. Jones*, 22 Ind. 310; *Webb v. Moore*, 25 Ind. 4.

10 *Livingston v. Moore*, 7 Peters, 420; *Williams v. Waldo*, 4 Ill. 264; *Grosvenor v. Chesley*, 48 Me. 369; *Sprott v. Reid*, 3 G. Greene, 489.

11 *Aurora T. Co. v. Holthouse*, 7 Ind. 59.

12 *Taylor v. Stearns*, 18 Gratt. 244.

**Statutes of Limitation** and usury laws, unless retroactive, do not impair the obligation of contracts;<sup>1</sup> so, an act reducing the time prescribed by a statute of limitations is not inconsistent, if reasonable time be given.<sup>2</sup> Statutes of limitations are not inconsistent if reasonable time be given before the bar takes effect,<sup>3</sup> but if unreasonable they are void;<sup>4</sup> yet if a substantial remedy remains, they are valid.<sup>5</sup> A limitation of one year on municipal bonds, for negotiation in a foreign market, is unreasonable.<sup>6</sup> Thirty days is not a reasonable time to allow for the bringing of a suit,<sup>7</sup> but an extension of time for bringing an action does not impair the obligation of the contract.<sup>8</sup> Whether the time allowed for commencing an action is reasonable or not is a question for the court, and not the legislature, to determine,<sup>9</sup> and it must appear that the unmistakable purpose and effect of the law is to cut off the right of the party, and not merely to limit the time.<sup>10</sup> A statute prescribing the time for the exercise of authority to establish a lottery is valid.<sup>11</sup> A statute requiring a new promise to be in writing, is valid if ample time is allowed to enforce the demand.<sup>12</sup> A statute of limitations repealing a prior act is void as to actions pending at the time of the repeal.<sup>13</sup> An act in the nature of a limitation act is constitutional, as it merely affects the remedy.<sup>14</sup>

1 *Sturges v. Crowninshield*, 4 Wheat. 122.

2 *Terry v. Anderson*, 95 U. S. 628.

4 *Pereles v. Watertown*, 3 Blas. 79; *Berry v. Ranadall*, 4 Met. (Ky.) 292; *Society for Prop. of Gospel v. Wheeler*, 2 Gall. 106; *Johnson v. Bond*, Hemp. 533; *Robinson v. Magee*, 9 Cal. 81; *Auld v. Butcher*, 2 Kans. 126; *Amy v. Smith*, 1 Litt. 326; *Proprietors v. Laborers*, 2 Ma.

275; *Garrett v. Beaumont*, 24 Miss. 377; *Forsyth v. Marbury*, R. M. Charit. 324; *Osborn v. Jaines*, 17 Wis. 573.

5 *Von Baumbach v. Bade*, 9 Wis. 559.

6 *Pereles v. Watertown*, 6 Biss. 79.

7 *Berry v. Ransdall*, 4 Met. (Ky.) 293.

8 *Cox v. Berry*, 13 Ga. 306; *Winston v. McCormick*, 1 Ind. 56; *Edwards v. McCaddon*, 20 Iowa, 520; *Swickard v. Bailey*, 3 Kans. 507; *Gilman v. Cutts*, 23 N. H. 376; *Smith v. Tucker*, 17 N. J. 82; *Wardlaw v. Buzzard*, 15 Rich. 153; *Pleasants v. Rohrer*, 17 Wis. 577.

9 *Pereles v. Watertown*, 6 Biss. 79. But see *Smith v. Morrison*, 39 Mass. 430.

10 *Rexford v. Knight*, 11 N. Y. 308.

11 *Phalen v. Commonwealth*, 8 How. 163; 1 Rob. (Va.) 713.

12 *Briscoe v. Anketell*, 28 Miss. 361; *Joy v. Thompson*, 1 Doug. 383.

13 *Sturges v. Crowninshield*, 4 Wheat. 207; *McElmoyle v. Cohen*, 13 Peters, 312; *Society v. Wheeler*, 2 Gall. 141; *Bank of Alabama v. Dalton*, 9 How. 522; *Kennebec Land Co. v. Laboree*, 2 Me. 293; *Kingsley v. Cousins*, 47 Me. 91; *Call v. Hagger*, 8 Mass. 429; *Beal v. Nason*, 14 Me. 344; *Woart v. Wimmick*, 3 N. H. 473.

14 *George v. Gardner*, 49 Ga. 441; *Bertrand v. Taylor*, 87 Ill. 235.

**Exemption laws.**—States may pass exemption laws,<sup>1</sup> but if the exemption is too large and materially affects the remedies, it is void;<sup>2</sup> as where a new constitution deprives courts of jurisdiction to sell exempt property.<sup>3</sup> Statutes exempting from execution impair the obligation as to prior contracts.<sup>4</sup> The legislature may exempt real as well as personal property;<sup>5</sup> but if the law is to enable the holding of large properties rather than to secure the well-being of citizens, it is void.<sup>6</sup> So, a State cannot enact a law to exempt property if it was liable to seizure and appropriation when the debt was incurred.<sup>7</sup> A State law exempting a homestead is valid if it is such as sound policy dictates,<sup>8</sup> although it leaves the debtor no property liable to execution.<sup>9</sup> Such a law is valid so far as it affects debts created after its passage, though prior to the declaration of homestead.<sup>10</sup> The subjection of property to execution, which was not so at the time the contract was made, does not impair the obligation of the contract.<sup>11</sup> No exemption can be allowed, as against a mortgagee claiming under a mortgage made prior to the law allowing the exemption.<sup>12</sup> An exemption law cannot divest the lien of a judgment and leave no means for the collection of the debt.<sup>13</sup> So, creating a new exemption by a constitutional provision impairs the obligation of prior contracts.<sup>14</sup>

1 *Planters' Bank v. Sharp*, 6 How. 301; *Von Hoffman v. Quincy*, 4 Wall. 535; *Morse v. Gould*, 11 N. Y. 281.

2 *Edwards v. Kearzey*, 96 U. S. 611; *Grimes v. Byrne*, 2 Minn. 89; *Stephenson v. Osborne*, 41 Miss. 119; *Morse v. Gould*, 11 N. Y. 281; *Lessley v. Phipps*, 40 Miss. 790.

3 *Hardeman v. Downer*, 30 Ga. 425.

4 *Quackenboss v. Danks*, 1 Denio, 128; 1 N. Y. 129; *Hawthorne v. Calef*, 2 Wall. 23. But see *contra*, *Mede v. Hand*, 5 Amer. L. Reg. N. S. 82; *Rockwell v. Hubbell*, 2 Doug. 197; *Morse v. Gould*, 11 N. Y. 281. And see *Roby v. Boswell*, 23 Ga. 51. See Supplement, *post*, 310.

5 *Hill v. Kessler*, 63 N. C. 436; *Jacobs v. Smallwood*, *Ibid.* 112.

6 *Cusick v. Douglas*, 3 Kans. 23.

7 *Penrose v. Erie Can. Co.* 53 Pa. 46; *State v. Bank*, 1 Rich. N. C. 63.

8 *Cusick v. Douglas*, 3 Kans. 23; *Root v. McGrew*, *Ibid.* 215.

9 *Hill v. Kessler*, 63 N. C. 436.

10 *In re Henkel*, 2 Sawy. 305.

11 *Reardon v. Searcy*, 2 Bibb, 202.

12 *Shelor v. Mason*, 2 Rich. N. S. 233.

13 *Gunn v. Barry*, 15 Wall. 610; *Smith v. Morse*, 2 Cal. 524; *Tillotson v. Millard*, 7 Minn. 513; *McKeithan v. Terry*, 64 N. C. 25; *Forsyth v. Marbury*, R. M. Charl. 324. But see *Hardeman v. Downer*, 39 Ga. 425; *In re Kennedy*, 2 Rich. N. S. 116; *Adams v. Smith*, *Ibid.* 228.

14 *Gunn v. Barry*, 15 Wall. 610; *Jones v. Brandon*, 48 Ga. 593.

**Stay laws.**—Laws providing for a stay of execution, so far as they abridge the remedy, impair the obligation of the contract,<sup>1</sup> and are in conflict with the National Constitution;<sup>2</sup> but if they affect the remedy, and not the right, they are valid.<sup>3</sup> A law procrastinating the remedy destroys part of the right.<sup>4</sup> The right to suspend the recovery of a debt for one period implies the right of suspending it for another.<sup>5</sup> A statute exempting from civil process while parties are in the military service is void.<sup>6</sup> So, a statute which subjects parties to a longer credit than was allowed by law when the contract was made, is unconstitutional.<sup>7</sup> A law which merely suspends temporarily proceedings for the collection of debts is constitutional;<sup>8</sup> so, where the stay is definite, and not unreasonable,<sup>9</sup> as that all actions to enforce a judgment shall be suspended for seven months,<sup>10</sup> or that all actions shall stand continued during the time defendant remains in the actual military service.<sup>11</sup> The legislature may provide for a stay of execution if the stay is not so unreasonable as to substantially impair the obligation of the contract;<sup>12</sup> so a provision for a stay, unless plaintiff will take property levied on at two-thirds of its appraised value, is unconstitutional;<sup>13</sup> but a statute providing for a reasonable stay, unless the property levied on shall bring two-thirds of its appraised value, is not unconstitutional in respect to its retrospective operation.<sup>14</sup> A statute adding conditions that no sale under execution for any sum less than two-thirds the



value of the property levied on shall be made, violates the obligation of the contract.<sup>15</sup> So, the legislature cannot provide for a stay when the contract provides that there shall be no stay.<sup>16</sup> A statute allowing a stay for an indefinite time,<sup>17</sup> upon the consent of two-thirds of the creditors, is void.<sup>18</sup> So, a statute allowing a stay of execution, so long as installments are paid, is void;<sup>19</sup> but a statute may provide for a stay on a judgment obtained by confession until the demand is due,<sup>20</sup> or until an appraisement is made.<sup>21</sup> A law which grants a stay of execution for a certain period upon a judgment superseded with sureties, impairs the obligation of contracts made before its adoption.<sup>22</sup> An act cannot affect a judgment rendered before its passage.<sup>23</sup> A State may grant a stay of execution upon a judgment due to a municipal corporation.<sup>24</sup> A statute which enacts that the obligation on official bonds shall not have the benefit of stay laws or appraisement laws, is valid.<sup>25</sup>

<sup>15</sup> *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 408; *Gantly v. Ewing*, 3 How. 707; *Howard v. Bugbee*, 24 How. 461; *Seoby v. Gibson*, 1 Am. Law Reg. N. S. 221; *Ex parte Pollard*, 40 Ala. 77.

<sup>2</sup> *Edwards v. Kearzey*, 96 U. S. 601, approving *Barnes v. Barnes*, 8 Jones (N. C.) 248; *Jones v. Crittenden*, 1 Car. Law Rep. 285; *Jacobs v. Smallwood*, 63 N. C. 112.

<sup>3</sup> *Cortell v. Ham*, 4 G. Greene, Iowa, 455; *Grosvenor v. Chesley*, 48 Mo. 369; *Swift v. Fletcher*, 6 Minn. 530.

<sup>4</sup> *Johnson v. Duncan*, 3 Mart. 531; as postponing the rendition of judgment for at least twelve months—*Ex parte Pollard*, 40 Ala. 77.

<sup>5</sup> *Jones v. Crittenden*, 1 Car. Law Rep. 285.

<sup>6</sup> *Clark v. Martin*, 49 Pa. 299; *Hasbrouck v. Shipman*, 16 Wis. 296.

<sup>7</sup> *January v. January*, 7 Mon. 542; *Pool v. Young*, *Ibid.* 587.

<sup>8</sup> *Grimball v. Ross*, Charl. 175.

<sup>9</sup> *State v. McGinty*, 41 Miss. 435; *Breitenback v. Bush*, 44 Pa. St. 313; *Coxe v. Martin*, *Ibid.* 323.

<sup>10</sup> *Johnson v. Higgins*, 2 Met. (Ky.) 566; *Barkley v. Glover*, 4 Met. (Ky.) 44.

11 *McCormick v. Rusch*, 15 Iowa, 127; *Edmundson v. Ferguson*, 11 Mo. 344; *Lindsey v. Burbridge*, *Ibid.* 545.

12 *Huntzinger v. Brock*, 3 Grant, 243.

13 *Baily v. Gentry*, 1 Mo. 164.

14 *Thompson v. Buckley*, 34 Leg. Int. 148; *Chadwick v. Moore*, 8 Watts & S. 49.

15 *McCracken v. Hayward*, 2 How. 608; *Gantly v. Ewing*, 3 How. 707; *Bronson v. Kinzie*, 1 How. 311; *Hunt v. Gregg*, 8 Blackf. 105; *Smoot v. Lafferty*, 2 Gilm. 383; *Rosier v. Hales*, 10 Iowa, 470; *Rawley v. Hooker*, 21 Ind. 144; *Baily v. Gentry*, 1 Mo. 164. *Contra*, *Waldo v. Williams*, 4 Ill. 264; *Catlin v. Munger*, 1 Tex. 538.

16 *Griffith v. Thomas*, 34 Leg. Int. 150; *Billmeyer v. Evans*, 40 Pa. St. 324; *Lewis v. Lewis*, 47 Pa. St. 127.

17 *Hudspeth v. Davis*, 41 Ala. 389.

18 *Bunn v. Gorgas*, 41 Pa. St. 441.

19 *Jones v. McMahan*, 30 Tex. 319; *Earle v. Johnson*, 31 Tex. 164.

20 *Wood v. Child*, 20 Ill. 209; *Barnes v. Barnes*, 8 Jones N. C. 366.

21 *Catlin v. Munger*, 1 Tex. 538.

22 *Blair v. Williams*, 4 Litt. 34; *Lapsley v. Brashears*, 4 Litt. 47. *Contra*, *Farnsworth v. Vance*, 2 Cold. 108.

23 *Dormire v. Cogly*, 8 Blackf. 177; nor will it apply to a mortgage executed prior to its passage—*Harrison v. Styres*, 74 N. C. 290.

24 *Governor v. Gridley*, Walk. 323.

25 *Pierce v. Mill*, 21 Ind. 27.

**State insolvency laws.**—An insolvent law which discharges from future debts is valid,<sup>1</sup> where the creditor and the debtor reside in the same State,<sup>2</sup> but not if the creditor resides in a different State;<sup>3</sup> but an insolvent law which releases the debtor from a debt contracted prior to its enactment impairs the obligation of the contract,<sup>4</sup> although the foreign creditor was temporarily residing in the State at the time the contract was made;<sup>5</sup> the question depends upon the citizenship of the creditor, and not upon the place where the contract was made, or was to be performed.<sup>6</sup> If the contract was not to be performed in the State, a discharge will not release from the demand of a citizen of another State,<sup>7</sup> and if the attorney of a foreign creditor takes a note for the debt, the court will regard the rights of the beneficial owner;<sup>8</sup> but a State insolvent law is valid against a foreign creditor so far as it releases the person of the debtor from imprisonment.<sup>9</sup> A statute may provide for the discharge of a jail-bond in a manner different from that named in the bond.<sup>10</sup> A law providing for the distribution of the assets of an insolvent estate is valid as against general creditors.<sup>11</sup> So, an insolvent law discharging the person and after-acquired property is not a violation of the Constitution.<sup>12</sup>

1 *Ogden v. Saunders*, 12 Wheat. 213; *Hempstead v. Reed*, 6 Conn. 480; *Blanchard v. Russell*, 13 Mass. 1; *Betts v. Bagley*, 12 Pick. 572; *Adams v. Storey*, 1 Paine, 79; 6 Hall L. J. 474. See *Roby v. Boswell*, 23 Ga. 51.

2 *Ogden v. Saunders*, 12 Wheat. 358; *Wilson v. Matthews*, 32 Ala. 332; *Pugh v. Bussell*, 2 Blackf. 366; *Norton v. Cook*, 9 Conn. 314; *Jacques v. Marchand*, 6 Cow. 497; *Mather v. Bush*, 16 Johns. 233; *Baker v. Wheaton*, 5 Mass. 509; *Walsh v. Farrand*, 13 Mass. 19; *Blanchard v. Russell*, 13 Mass. 1; *Alexander v. Gibson*, 1 Nott & McC. 440; *Smith v. Carsons*, 1 Ohio, 236. And see *Herring v. Selding*, 2 Ark. 12; *Smith v. Mead*, 3 Conn. 253; *Hammett v. Anderson*, *Ibid.* 304; *Medbury v. Hopkins*, *Ibid.* 472; *Hinkley v. Marian*, 3 Mason, 88; *Vanuxem v. Hazlehursts*, 4 N. J. 192; *Ballantine v. Haight*, 16 N. J. 196.

3 *Ogden v. Saunders*, 12 Wheat. 369; *Boyle v. Zacharie*, 6 Peters, 635; *Cook v. Moffat*, 5 How. 295; *Baldwin v. Hale*, 1 Wall. 223; *Kelly v. Drury*, 9 Allen, 27; *Pugh v. Bussell*, 2 Blackf. 366; *Norton v. Cook*, 9 Conn. 314; *Bradford v. Farrand*, 13 Mass. 18; *Donnelly v. Corbett*, 7 N. Y. 500; *Van Reimsdyk v. Kaue*, 1 Gall. 630; 9 Cranch, 158; *Huntley v. Morean*, 3 Mason, 88.

4 *Sturges v. Crowninshield*, 4 Wheat. 122; *Farmers &c. Bank v. Smith*, 6 Wheat. 131; 3 Serg. & R. 63; *Golden v. Prince*, 3 Wash. C. C. 313; *Boardman v. De Forest*, 5 Conn. 1; *Roosevelt v. Cebra*, 17 Johns. 168; *Post v. Riley*, 18 Johns. 54; *In re Wendell*, 19 Johns. 153; *Oldens v. Hallet*, 5 N. J. 466; *Smith v. Mead*, 3 Conn. 253; *Roosevelt v. Cebra*, 17 Johns. 108; *Kimberly v. Ely*, 6 Pick. 451; *Corner v. Miller*, 1 Bank. Reg. 99; *Cook v. Moffatt*, 5 How. 295. But see *Adams v. Storey*, 1 Paine, 79; *Barber v. Minturn*, 1 Day, 136; *McMillan v. McNeill*, 4 Wheat. 209; *Terrett v. Taylor*, 9 Cranch, 43. See Supplement, *post*, 310.

5 *Easterly v. Goodwin*, 35 Conn. 279.

6 *Baldwin v. Hale*, 1 Wall. 223; 3 Amer. L. R. N. S. 462; *Hawley v. Hunt*, 27 Iowa, 303.

7 *McKim v. Willis*, 83 Mass. 512.

8 *Isley v. Merlan*, 61 Mass. 242; *Crow v. Coons*, 27 Mo. 512.

9 *Glenn v. Humphreys*, 4 Wash. C. C. 424; *Choteau v. Richardson*, 94 Mass. 368; *Carey v. Conrad*, 2 Miles, 92; *Donnelly v. Corbett*, 7 N. Y. 500.

10 *Oriental Bank v. Freeze*, 18 Mo. 109; *Morse v. Rice*, 21 Me. 53.

11 *Deichman's Appeal*, 2 Whart. 395.

12 *Wilson v. Matthews*, 32 Ala. 332.

### **Legislative authority over judicial proceedings.**

The forms and system of courts and proceedings may be changed by the legislature.<sup>1</sup> A State may create, alter, or abolish courts, and change their sessions;<sup>2</sup> but a change in the terms which operates on contracts only is void.<sup>3</sup> The legislature may pass laws confirming doings of courts and other public bodies known to the laws.<sup>4</sup> A statute may regulate the time and mode of trial,<sup>5</sup> or change the manner of commencing action, serving notices, and process;<sup>6</sup> but a statute extending the time for prosecution cannot revive a right which was barred at the time of its passage.<sup>7</sup> A statute may extend the time for taking default.<sup>8</sup> The legislature may change the rules of evidence so as to affect prior contracts,<sup>9</sup> but it cannot cut

off or destroy the rights of a *bona fide* holder of commercial paper by changing the rules of pleading or evidence;<sup>10</sup> so, a law which changes the rule of evidence of a contract, impairs its obligation.<sup>11</sup> A statute regulating proofs is valid;<sup>12</sup> so, a law dispensing with the necessity of proving the names of individual partners is valid,<sup>13</sup> or of proving the signature to a written instrument.<sup>14</sup> A statute may change the presumption in favor of tax-deeds.<sup>15</sup> A statute may facilitate the means of ascertaining what the contract was,<sup>16</sup> or may permit inquiry into the consideration of a sealed instrument executed in another State;<sup>17</sup> but a statute which requires proof of consideration, on a plea under oath that it has been used for illegal purposes, is void.<sup>18</sup> A statute making parties competent witnesses on their own behalf is valid.<sup>19</sup> A statute may permit either party to give in evidence the consideration, its value, the intent of the parties as to payment, the value of the currency, and may direct that verdict and judgment be on principles of equity;<sup>20</sup> but the jury cannot put their own estimate upon the value of the contract instead of taking the value stipulated by the parties.<sup>21</sup> A retrospective statute, which provides that no verdict should be rendered unless the contract had been legally returned for taxes, is void.<sup>22</sup>

1 *Livingston v. Moore*, 7 Peters, 469; *Bald*, 424; *Rathbone v. Bradford*, 1 Ala. 312; *Grubbs v. Harris*, 1 Bibb, 567; *Stoddard v. Smith*, 5 Blinn, 355; *Smith v. Bryan*, 34 Ill. 264; *Maynes v. Moore*, 16 Ind. 116; *Hopkins v. Jones*, 22 Ind. 310; *Webb v. Moore*, 25 Ind. 4; *Citizens' Bank v. Degnooldt*, 25 La. An. 628; *Wheat v. State, Minor*, 199; *Vanzandt v. Waddell*, 2 Yerg. 260.

2 *Rathbone v. Bradford*, 1 Ala. 312; *Ex parte Pollard*, 40 Ala. 77; *Woods v. Bule*, 5 How. (Miss.) 285; *New Kirk v. Chapron*, 17 Ill. 344; *Lapsley v. Brashears*, 4 Litt. 47; *Johnson v. Duncan*, 3 Mart. 531; *Johnson v. Higgins*, 3 Met. (Ky.) 566; *Morse v. Goold*, 11 N. Y. 231; *State v. Barringer*, Phil. (N. C.) 554; *Wood v. Wood*, 14 Rich. 148; *Hansrick v. Rouse*, 17 Ga. 56.

3 *Jacobs v. Smallwood*, 63 N. C. 112; *Johnson v. Winslow*, 64 N. C. 27.

4 *Kearney v. Taylor*, 15 How. 494; *Goshen v. Stonington*, 4 Conn. 310; *Thornton v. McGrath*, 1 Duval, 349; *Davis v. State Bank*, 7 Ind. 316; *Underwood v. Lilly*, 10 Serg. & R. 97.

5 *Woods v. Bule*, 5 How. (Miss.) 285; *Ex parte Pollard*, 40 Ala. 77; *Van Baumbach v. Bades*, 9 Wis. 559.

6 *Railroad Co. v. Hecht*, 95 U. S. 168; *McCreary v. State*, 27 Ark. 425; *New Albany &c. R. R. Co. v. McNamara*, 11 Ind. 543.

7 *State v. Sneed*, 25 Tex. Sup. 66.

8 *Von Baumbach v. Bade*, 9 Wis. 559; *Holloway v. Sherman*, 12 Iowa, 282.

9 *People v. Mitchell*, 45 Barb. 203; *Fales v. Wadsworth*, 23 Me. 553; *Schelble v. Bachs*, 41 Ala. 423; *Tarleton v. Southern Bank*, *Ibid.* 722; *Kirtland v. Molton*, *Ibid.* 548; *Herbert v. Easton*, 43 Ala. 547; *Slaughter*

- *v. Culpepper*, 35 Ga. 26; *Roby v. Chicago*, 64 Ill. 447; *Howard v. Moot*, 64 N. Y. 262.
- 10 *Cornell v. Hichens*, 11 Wis. 353.
- 11 *Marsh v. Burroughs*, 1 Woods, 463.
- 12 *Wood v. New York*, 6 Robt. 463.
- 13 *Ballard v. Ridgley, Morris*, 27.
- 14 *Ingraham v. Dooley, Morris*, 28.
- 15 *Hickox v. Tallman*, 38 Barb. 608; *Roby v. City*, 64 Ill. 447; *Smith v. Cleveland*, 17 Wis. 556; *Lain v. Shepardson*, 18 Wis. 59.
- 16 *Woodfin v. Slader, Phill. (N. C.)* 200.
- 17 *Williams v. Haines*, 27 Iowa, 251.
- 18 *Edwards v. Dixon*, 53 Ga. 334.
- 19 *Ralston v. Lothain*, 18 Ind. 303; *Neass v. Mercer*, 15 Barb. 318.
- 20 *Slaughter v. Culpepper*, 35 Ga. 25; *Cutts v. Hardee*, 33 Ga. 350; *Taylor v. Flint*, 35 Ga. 124; *Kirtland v. Molton*, 41 Ala. 549; *Tarleton v. Southern Bank*, 41 Ala. 722; *Herbert v. Easton*, 43 Ala. 547; *Robeson v. Brown*, 63 N. U. 554; *King v. W. & W. R. R. Co.* 66; N. C. 277; 91 U. S. 3; *Rutland v. Copes*, 15 Rich. 84.
- 21 *W. & W. R. R. Co. v. King*, 91 U. S. 3; 66 N. C. 277; *Leach v. Smith*, 25 Ark. 246; *Woodruff v. Tilly*, 25 Ark. 309.
- 22 *Lathrop v. Brown*, 1 Woods, 474; *Walker v. Whithead*, 16 Wall. 314; *Gardner v. Jeter*, 49 Ga. 195; *Griffiths v. Shipp*, *Ibid.* 231; *Kimbrow v. Bank*, *Ibid.* 419; *Dougherty v. Fogle*, 50 Ga. 464.

**Statute rights.**—Rights growing out of statute provisions may be modified by statute.<sup>1</sup> The legislature may regulate the marriage contract,<sup>2</sup> or may regulate divorces,<sup>3</sup> or may regulate dower.<sup>4</sup> A statute requiring interest to be paid in advance to enable the mortgagor to remain in possession is valid.<sup>5</sup> A statute authorizing the sale of property free from incumbrance, and transferring the lien thereof to the proceeds, is valid;<sup>6</sup> but if it permits the sale whether it brings sufficient to pay the incumbrance or not, it impairs the obligation of the mortgage;<sup>7</sup> so if it allows the proceeds of the property first to be applied to the payment of costs other than of the sale.<sup>8</sup> The lien of a judgment may be taken away by statute.<sup>9</sup> Depriving creditors of their judgment-lien does not impair the obligation of contracts,<sup>10</sup> and requiring a party to record the abstract of his judgment to preserve the lien is valid.<sup>11</sup> A State has control of a judgment for damages in a proceeding to appropriate private property to public use.<sup>12</sup> Liens created by law are subject to the control of the legislature, to either alter, vary, modify, or repeal;<sup>13</sup> so, a statute giving a sub-contractor a lien is valid.<sup>14</sup> A statute creating a lien upon the property of the debtor in favor of an existing contract is valid.<sup>15</sup> A statute giving the grantee of a rent charge the right of

reëntury for nonpayment of rent is valid;<sup>16</sup> so, an act taking away priority of claim for rent in case of a levy is valid.<sup>17</sup> A statute depriving a lessee of an action for forcible entry and detainer against a lessor,<sup>18</sup> or a statute giving an action of covenant against an assignee of a leasehold estate, is valid.<sup>19</sup>

1 *Oriental Bank v. Freeze*, 18 Me. 109; *Morse v. Rice*, 21 Me. 53.

2 *White v. White*, 5 Barb. 474; *Fultz v. Fox*, 9 B. Mon. 499; *Kelly v. McCarthy*, 3 Bradf. 7; *Starr v. Hamilton*, Deady, 268; *Noel v. Ewing*, 9 Ind. 37; *Jones' App.* 57 Pa. St. 369. See Supplement, *post*, 304.

3 *Dartmouth Coll. v. Woodward*, 4 Wheat. 518; *Berthelemy v. Johnson*, 3 B. Mon. 90; *Tolen v. Tolen*, 2 Blackf. 407; *Starr v. Pease*, 8 Conn. 541; *Maguire v. Maguire*, 7 Dana, 181; *Townsend v. Griffin*, 4 Harring. 440; *Adams v. Palmer*, 51 Me. 490; *Cabell v. Cabell*, 1 Met. Ky. 319; *Clark v. Clark*, 10 N. H. 380; *Cronise v. Cronise*, 54 Pa. St. 255. But see *Pouder v. Graham*, 4 Fla. 23; *State v. Fry*, 4 Mo. 120; *Bryson v. Campbell*, 12 Mo. 488. And see *Holmes v. Holmes*, 4 Barb. 295.

4 *Kelly v. McCarthy*, 3 Bradf. 7; *Starr v. Hamilton*, Deady, 268; *Noel v. Ewing*, 9 Ind. 37; *Barbour v. Barbour*, 46 Me. 9; *Lucas v. Sawyer*, 17 Iowa, 517; *Magee v. Young*, 40 Miss. 164; *Lawrence v. Miller*, 1 Sandf. 516; 2 N. Y. 245; *In re Lawrence*, 5 N. Y. Sup. 310; *Moore v. Mayor*, 8 N. Y. 110.

5 *Stono v. Bassett*, 4 Minn. 298.

6 *Potts v. Water-power Co.* 9 N. J. Eq. 592; *Potts v. N. J. Arms &c. Co.* 17 N. J. Eq. 395.

7 *Martin v. Somerville*, 3 Wall. Jr. 206.

8 *Martin v. Somerville*, 3 Wall. Jr. 206.

9 *New Orleans v. Holmes*, 13 La. An. 502; *Iverson v. Shorter*, 9 Ala. 713; *Beck v. Burnett*, 22 Ala. 822; *Dally v. Burke*, 28 Ala. 328; *Curry v. Landers*, 35 Ala. 280. See Supplement, *post*, 310.

10 *Livingston v. Moore*, 7 Peters, 469; *Bald.* 424; *Bank v. Longworth*, 1 McLean, 35; *Dally v. Burke*, 28 Ala. 328; *Curry v. Landers*, 35 Ala. 280; *McCormick v. Alexander*, 2 Ohio, 285.

11 *Tarpley v. Hamer*, 17 Miss. 310.

12 *Garrison v. Mayor*, 21 Wall. 196; *In re Broadway*, 61 Barb. 483.

13 *Evans v. Montgomery*, 4 Watts & S. 218; *Patin v. Prejean*, 7 La. 301; *Woodbury v. Grimes*, 1 Colo. 100; *Templeton v. Horne*, 82 Ill. 401. See Supplement, *post*, 309.

14 *Sullivan v. Brewster*, 1 E. D. Smith, 681; *Miller v. Moore*, *Ibid.* 739.

15 *Gordon v. Canal Co.* 1 McA. 513; *Brien v. Clay*, 1 E. D. Smith, 649; *Bolton v. Johns*, 5 Pa. St. 145. But see *Kinney v. Sherman*, 28 Ill. 530.

16 *Van Rensselaer v. Ball*, 19 N. Y. 100.

17 *Stocking v. Hunt*, 3 Denio, 274.

18 *Drehman v. Stifle*, 8 Wall. 595; 41 Mo. 184.

19 *Taggart v. McGinn*, 14 Pa. St. 155.

**Right of redemption.**—The right to redeem is no part of the contract, and may be repealed at any time,<sup>1</sup> but a right to redeem at any time within two years after sale under a mortgage cannot retroact.<sup>2</sup> A statute may give the mortgagor the right to remain in possession during time of redemption;<sup>3</sup> but a statute providing that the mortgagor shall not be liable for rent after the sale, is void so far as it applies to prior contracts.<sup>4</sup> The legislature cannot change the estate which the trustee is authorized to sell, and extend the time for redemption;<sup>5</sup> but a statute may prescribe a shorter time for advertising a mortgage sale than existed at the time of the mortgage.<sup>6</sup> Redemption laws as to judgments on anterior contracts are in conflict with this provision.<sup>7</sup> A law authorizing the redemption of property sold by forced sale impairs the obligation of contracts.<sup>8</sup> The legislature cannot extend the time for the redemption of lands sold for taxes,<sup>9</sup> nor apply appraisement laws to anterior contracts;<sup>10</sup> so, laws for the release and discharge of securities are in conflict,<sup>11</sup> and laws allowing the debtor to remove property are void as to prior judgment-liens.<sup>12</sup> A law which gives the mortgagor a period in which to redeem confers an equitable estate and impairs the obligation of the contract;<sup>13</sup> but when a mortgagor applies to a court for the enforcement of his mortgage, he must take the remedy as he finds it.<sup>14</sup> The right to redeem from execution sale exists solely by statute, which may be repealed at any time.<sup>15</sup> A State may provide that all judicial sales shall be made subject to redemption, and this will not violate the obligation of existing judgments,<sup>16</sup> or may provide for redemption from sale under a lien.<sup>17</sup>

1 *Tuolumne Red. Co. v. Sedgwick*, 15 Cal. 515; *Holland v. Dickerson*, 41 Iowa, 367. But see *Cargill v. Power*, 1 Mich. 363; *Iverson v. Shorter*, 9 Ala. 713; *Beck v. Burnett*, 22 Ala. 822.

2 *Howard v. Bugbee*, 24 How. 461; 32 Ala. 713; *Seale v. Mitchell*, 8 Cal. 401; *Thorne v. San Francisco*, 4 Cal. 127; *Malony v. Fortune*, 14 Iowa, 417. But see *Iverson v. Shorter*, 9 Ala. 713.

3 *Heyward v. Judd*, 4 Minn. 483; *Berthold v. Holman*, 12 Minn. 335; *Berthold v. Fox*, 13 Minn. 501.

4 *Greenfield v. Dorris*, 1 Sneed, 548.

5 *Heyward v. Judd*, 4 Minn. 483; *Goenen v. Schroeder*, 8 Minn. 387; *Carrol v. Rossiter*, 10 Minn. 174.

6 *James v. Stull*, 9 Barb. 482.

7 *Scobey v. Gibson*, 17 Ind. 572; *Inglehart v. Wolfen*, 20 Ind. 32.

8 *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 603; *Gantly v. Ewing*, 3 How. 716; *Howard v. Bugbee*, 24 How. 464; *Weaver v. Mallot*, 15 La. An. 395; *Billmeyer v. Evans*, 40 Pa. St. 324; *Bunn v. Gorgus*, 41 Pa. St. 441; *Oliver v. McClure*, 28 Ark. 555; *Scobey v. Gib-*

son, 17 Ind. 572. But see *Turner v. Watkins*, 31 Ark. 429; *Moore v. Martin*, 38 Cal. 428.

9 *Robinson v. House*, 13 Wis. 341; *Dikeman v. Dikeman*, 11 Paige, 484. But see *Gault's Appeal*, 33 Pa. St. 94.

10 *Rosier v. Hale*, 10 Iowa, 470.

11 *Swift v. Fletcher*, 6 Minn. 550.

12 *Tillotson v. Millard*, 7 Minn. 513.

13 *Bronson v. Kinzie*, 1 How. 311; *Grantly v. Ewing*, 3 How. 716. But see *Waldo v. Williams*, 4 Ill. 264; *Stone v. Bassett*, 4 Minn. 298; *Heyward v. Judd*, *Ibid.* 483; *Freeborn v. Pettibone*, 5 Minn. 277.

14 *Heyward v. Judd*, 4 Minn. 483.

15 *Holland v. Dickerson*, 41 Iowa, 367; *Tuolumne Red. Co. v. Sedgwick*, 15 Cal. 515. But see *Cargill v. Power*, 1 Mich. 339.

16 *Moore v. Martin*, 33 Cal. 428; *Turner v. Watkins*, 31 Ark. 429; *Tuolumne Red. Co. v. Sedgwick*, 15 Cal. 515. But see *Oliver v. McClure*, 28 Ark. 555; *Scobey v. Gibson*, 17 Ind. 572; *Inglehart v. Wolfen*, 20 Ind. 52.

17 *Templeton v. Horne*, 82 Ill. 421.

**State power of taxation.**—A tax upon a new subject, or an increased tax upon an old one, does not impair the obligation of the contract.<sup>1</sup> A statute imposing a tax on a mortgage is valid.<sup>2</sup> So, a tax on a loan may authorize the borrower to deduct the amount of the tax from the interest.<sup>3</sup> A bond received as a security for the purchase of property may be taxed to any extent required by the State government.<sup>4</sup> So, a tax upon the annual rent reserved in leases does not impair the obligation of the contract.<sup>5</sup> A State may tax bonds issued by itself for borrowed money.<sup>6</sup> A State cannot pass a law taxing a corporation when it violates the obligation of the contract.<sup>7</sup> So, a subsequent act, imposing additional taxation on shares of stockholders, impairs the obligation.<sup>8</sup> A State may impose a tax on its corporation as an entity as well as upon the corporation stock, its capital, or its separate corporation property, and this may be in proportion to the income received as well as to the value;<sup>9</sup> or it may repeal a temporary rate and impose another and higher rate.<sup>10</sup> A statute authorizing a tax according to a previous assessment is not retrospective.<sup>11</sup> The provisions in this clause are a limitation on the taxing power of the State, as well as upon all its legislation.<sup>12</sup>

1 *North Mo. R. R. v. Maguire*, 20 Wall. 46; 49 Mo. 490.

2 *Cook v. Smith*, 30 N. J. 387.

3 *Maltby v. Reading &c. R. R. Co.* 52 Pa. St. 140.

4 *Weston v. Charleston*, 2 Peters, 449; Harp. 340.

5 *Loring v. State*, 16 Ohio, 590; *Livingston v. Hollenbeck*, 4 Barb. 9.

6 *Champaign Bank v. Smith*, 7 Ohio St. 42; *People v. Home Ins. Co.*, 29 Cal. 533, explained in *Murray v. Charleston*, 96 U. S. 447.



7 *Washington University v. Rouse*, 8 Wall. 439; *Home of the Friendless v. Rose*, 8 Wall. 430.

8 *Farrington v. Tennessee*, 95 U. S. 679.

9 *Delaware R. R. Tax*, 18 Wall. 232.

10 *St. Joseph v. Hannibal & St. J. R. R. Co.* 39 Mo. 476.

11 *Locke v. New Orleans*, 4 Wall. 172.

12 *Murray v. Charleston*, 96 U. S. 432.

**Licenses.**—A license is a contract, but revocable at the will of the licensor, unless otherwise provided in the State constitution.<sup>1</sup> If no bonus is given for the right, a subsequent levy of a tax is valid.<sup>2</sup> So, a license to sell liquor is issued as a part of the police system of the State, and is subject to modification or revocation.<sup>3</sup> The license to practice law or medicine may be modified in any manner which the public welfare may demand, and a tax on the license is not unconstitutional.<sup>4</sup> If the license to erect a dam in a navigable river is defeasible by the terms thereof, it may be modified or revoked.<sup>5</sup> The certificate to a foreign corporation does not constitute a contract so as to prohibit subsequent taxation by the laws of the State.<sup>6</sup>

1 *Phalen v. Virginia*, 8 How. 163; 3 Harring. 441; *Calder v. Kurby*, 5 Gray, 537; *Adams v. Hackett*, 27 N. H. 283; *Hirn v. Ohio*, 1 Ohio St. 21; *Metrop. Bd. of Excise v. Barrie*, 7 Tiff. 667; *Bass v. Mayor, Meigs*, 421; *Gregory v. Shelby*, 2 Met. (Ky.) 583; *Freiligh v. State*, 8 Mo. 605; *State v. Sterling*, 8 Mo. 667; *State v. Hawthorn*, 9 Mo. 389. See *post*, 304.

2 *Wendover v. Lexington*, 15 B. Mon. 253.

3 *Fell v. State*, 42 Md. 71; *Calder v. Kurby*, 71 Mass. 597; *State v. Holmes*, 33 N. H. 225; *Metrop. Bd. of Excise v. Barrie*, 34 N. Y. 657; *Comm. v. Intox. Liquors*, 115 Mass. 153.

4 *State v. Fellowes*, 12 La. An. 344; *State v. Waples*, *Ibid.* 343; *New Orleans v. Turpen*, 13 La. An. 53; *Simmons v. State*, 12 Mo. 268; *State v. Gazlay*, 5 Ohio, 14.

5 *Rundle v. Del. &c. Can. Co.* 14 How. 80; 1 Wall. Jr. 275; *Pratt v. Brown*, 3 Wis. 603; *Monongahela Nav. Co. v. Coons*, 6 Watts & S. 101; *Susquehanna Can. Co. v. Wright*, 9 *Ibid.* 9. And see *Glover v. Powell*, 10 N. J. Eq. 211; *Cranshaw v. State R. Co.* 6 Rand. 245.

6 *Home Ins. Co. v. Augusta*, 23 U. S. 116.

**Exemption from taxation.**—The State right of taxation can be waived only by express stipulation,<sup>1</sup> and the intention to exempt must be clear.<sup>2</sup> The legislature may bind the State by contract so as to exempt property from taxation,<sup>3</sup> but the contract must be construed strictly.<sup>4</sup> If property be given to a society for certain purposes, under a statute exempting such gifts, the statute is a contract with the donors, and such property is exempt so long as it is used for the purposes of the donee.<sup>5</sup> A provision in the charter of an eleemosynary corporation, or of a university, that its property shall be exempt, is a

contract and cannot be impaired.<sup>6</sup> A statute which provides that public grants for pious and other uses shall be forever exempt has no effect on prior grants while it remains in force, and may be repealed.<sup>7</sup> If the exemption is a mere gratuity, is spontaneous, and no service or duty or other condition is imposed, it may be withdrawn at any time;<sup>8</sup> but if a statute for a valid consideration stipulates that certain lands shall be exempt from taxation, it cannot pass a law to impair the obligation of the contract,<sup>9</sup> nor will the payment of taxes for twenty years prevent the owner from claiming the exemption.<sup>10</sup> If a statute provides that all land purchased from the United States shall be exempt from taxation for a certain period, it cannot be taxed till the expiration of that time.<sup>11</sup> If the land is exempt the buildings erected on it are exempt also;<sup>12</sup> but if the interest in the buildings is created entirely distinct from the interest in the lands, the buildings may be taxed although the land is exempt.<sup>13</sup> If the land be exempt it will be exempt in the hands of the lessee;<sup>14</sup> but if the lessee covenants to pay such taxes as may be assessed thereon he cannot allege the unconstitutionality of an act imposing a tax.<sup>15</sup> If the privilege of exemption is annexed to the land it will pass to a purchaser;<sup>16</sup> but it will not pass to a purchaser under a subsequent act authorizing the sale,<sup>17</sup> and a subsequent statute may render it liable where it is conveyed without the reservation of an annual rent.<sup>18</sup>

1 *Pacific R. R. Co. v. Maguire*, 20 Wall. 42; *Tomlinson v. Branch*, 15 Wall. 430; *Tomlinson v. Jessup*, 15 Wall. 454; *Providence R. R. v. Billings*, 4 Peters, 514; *Charles River Bridge v. Warren Bridge*, 11 Peters, 420; *Turnpike Co. v. State*, 3 Wall. 210; *Jones & Co. v. Comm.* 69 Pa. St. 137.

2 *Gilman v. Sheboygan*, 2 Black, 513; *Rector & c. v. Philadelphia Co.* 24 How. 302; *Jones & Co. v. Comm.* 69 Pa. St. 137.

3 *New Jersey v. Wilson*, 7 Cranch, 166; *Richmond R. R. Co. v. Louisa R. R. Co.* 13 How. 71; *Dodge v. Woolsey*, 18 How. 331; *Piqua Br. Bk. v. Knoop*, 16 How. 339; *Von Hoffman v. Quincy*, 4 Wall. 535; *Jefferson Br. Bk. v. Skelly*, 1 Black, 417; *Washington Univ. v. Rouse*, 8 Wall. 439; *Tomlinson v. Branch*, 15 Wall. 460; *Tomlinson v. Jessup*, 15 Wall. 454; *Pacific R. R. Co. v. Maguire*, 20 Wall. 42; *Erie R. Co. v. Penn.* 21 Wall. 498; *Gordon v. Appeals Tax Ct.* 3 Har. 133; *McGee v. Mathis*, 4 Wall. 143; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Wilmington R. R. Co. v. Reid*, 13 Wall. 264; *Humphrey v. Pegues*, 16 Wall. 244.

4 *Weston v. Supervisors*, 44 Wis. 242.

5 *Atwater v. Woodbridge*, 6 Conn. 223; *Osborne v. Humphreys*, 7 Conn. 335; *Parker v. Redfield*, 10 Conn. 490; *Landon v. Litchfield*, 11 Conn. 251; *Seymour v. Hartford*, 21 Conn. 431; *Herrick v. Randolph*, 13 Vt. 525.

6 *Home of The Friendless v. Rouse*, 8 Wall. 430; *Washington University v. Rouse*, 8 Wall. 439; 42 Mo. 308.

7 *Herrick v. Randolph*, 13 Vt. 525.

8 *Rector v. Philadelphia*, 24 How. 300; 24 Pa. St. 229; *Tucker v. Ferguson*, 22 Wall. 527; *Brainerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116; *West Wisconsin R. R. Co. v. Trempealeau Co.* 93 U. S. 595. And see *Providence Bank v. Billings*, 4 Wheat. 316; *Fertilizing Co. v. Hyde Park*, 97 U. S. 666.

9 *State v. Wilson*, 7 Cranch, 164; 2 N. J. 300.

10 *Landon v. Litchfield*, 11 Conn. 251.

11 *Thompson v. Holton*, 6 McLean, 386. And see *McGee v. Mathis*, 4 Wall. 143.

12 *Osborne v. Humphreys*, 7 Conn. 335.

13 *Parker v. Redfield*, 10 Conn. 490.

14 *Osborne v. Humphrey*, 7 Conn. 335; *Landon v. Litchfield*, 11 Conn. 251; *Hardy v. Waltham*, 24 Mass. 108; *Matheny v. Golden*, 5 Ohio St. 361; *Kumler v. Traber*, 5 Ohio St. 442.

15 *Hart v. Cornwall*, 14 Conn. 228.

16 *State v. Wilson*, 7 Cranch, 164; 2 N. J. 300.

17 *Armstrong v. Treasurer*, 16 Peters, 281; 10 Ohio, 235.

18 *New Haven v. Sheffield*, 30 Conn. 160; *Brainerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116.

**Land grants.**—A statute repealing a prior grant of land is void.<sup>1</sup> A State cannot pass a law whereby the estate granted will be impaired or rendered null and void.<sup>2</sup> An executed contract is impaired by a law operating to divest any right or estate vested under a grant,<sup>3</sup> and any attempt to destroy vested rights is unconstitutional.<sup>4</sup> A subsequent statute imposing conditions not contained in the grant is unconstitutional.<sup>5</sup> A grant of the right to purchase cannot be impaired by a subsequent act.<sup>6</sup> If a party by payment of the purchase-money becomes entitled to a grant, the State cannot by a subsequent act provide for a forfeiture of his right.<sup>7</sup> A grant of land to a railroad cannot be subsequently revoked.<sup>8</sup> If a grant includes both sides of an unnavigable river, a State cannot by subsequent legislation compel the owner to alter a dam already erected.<sup>9</sup> Statutes which affect the right of a patentee of the State are in violation of the obligation of the contract,<sup>10</sup> but a party may be required to establish the genuineness of his certificate to be entitled to survey and patent.<sup>11</sup> A statute cannot divest the innocent purchaser from a grantee who procured his title by fraud.<sup>12</sup> The property of an alien purchased under a special act cannot be transferred to another by mere legislative power.<sup>13</sup> So, a legislature cannot by a subsequent act provide a different mode of perpetuating a trust.<sup>14</sup> A law annulling conveyances and declaring that grantors shall stand seized of their former estates is unconstitutional.<sup>15</sup> A law which restricts the rights of a claimant as against an occupant of land is in violation of a compact between States;<sup>16</sup>

but a statute allowing an occupant to recover compensation for improvements does not impair the obligation of the grant.<sup>17</sup>

- 1 U. S. v. Minnesota &c. R. R. Co. 1 Black, 353; 1 Minn. 127.
- 2 Fletcher v. Peck, 6 Cranch, 87; Gaines v. Buford, 1 Dana, 431; People v. Platt, 17 Johns. 195; Crenshaw v. State Riv. Co. 6 Rand. 245.
- 3 Phila. &c. R. R. Co. v. Bowers, 4 Houst. 506.
- 4 U. S. v. Louisville &c. Can. Co. 4 Dill. 611.
- 5 Gaines v. Buford, 1 Dana, 431.
- 6 U. S. v. Great Falls Manuf. Co. 21 Md. 119.
- 7 Winter v. Jones, 10 Ga. 130; Fogg v. Williams, 2 Head, 474.
- 8 Davis v. Gray, 16 Wall. 203.
- 9 People v. Platt, 17 Johns. 195; State v. Glenn, 7 Jones (N. C.) 321; Cornelius v. Glenn, 7 Jones (N. C.) 512.
- 10 People v. Platt, 17 Johns. 195.
- 11 League v. DeYoung, 11 How. 185.
- 12 Fletcher v. Peck, 6 Cranch, 87.
- 13 Bonaparte v. Camden &c. Co. Bald. 205.
- 14 Fletcher v. R. & B. R. R. Co. 39 Vt. 535.
- 15 Fletcher v. Peck, 6 Cranch, 87; Terrett v. Taylor, 9 Cranch, 49; Montgomery v. Kasson, 16 Cal. 180; Grogan v. San Francisco, 18 Cal. 590; Berrett v. Oliver, 7 Gill & J. 191.
- 16 Green v. Biddle, 8 Wheat. 1.
- 17 Albee v. May, 2 Paine, 74; Armstrong v. Jackson, 1 Blackf. 210; Scott v. Mather, 14 Tex. 235. But see Bristoe v. Evans, 2 Overt. 341; Nelson v. Allen, 1 Yerg. 360.

**Grants.**—A grant made for the purpose of public instruction is not subject to subsequent legislative control; <sup>1</sup> but if a scholarship does not name the place of tuition, the locality of the college may be changed.<sup>2</sup> If parties dedicate a square to public use, the legislature cannot authorize its sale and use for a purpose foreign to the object of the grant;<sup>3</sup> but subjecting the land of a grantee to the payment of his debts does not impair vested rights under the grant.<sup>4</sup> A grant of a portion of submerged lands will not prevent the improvement of the remainder by the State.<sup>5</sup> The legislature may prohibit the use of a place for a cemetery, although there is a covenant in the grant that the place may be so used.<sup>6</sup> Where a religious corporation is under a disability to convey by its charter, a State may authorize a sale;<sup>7</sup> so, a statute providing for the sale of lands by tenants in common, or joint tenants, is valid.<sup>8</sup> A State may release its interest in an escheated estate to the occupant.<sup>9</sup> An act confirming a deed defectively acknowledged does not impair the obligation of contracts.<sup>10</sup> Although the effect of a registration law is to render a prior deed fraudulent and void

against subsequent purchasers, it is not a law impairing obligations.<sup>11</sup> A statute which perfects a voidable entry and gives a patent therefor is valid, although it divests a grant made after entry but before its passage.<sup>12</sup> A grant of land by the United States to a State is on conditions, and its acceptance is a contract.<sup>13</sup>

- 1 Terrell *v.* Taylor, 9 Cranch, 43; Grammar School *v.* Burt 11 Vt. 632.
- 2 Houston *v.* Jefferson College, 63 Pa. St. 428.
- 3 Warren *v.* Mayor, 22 Iowa, 351.
- 4 Livingston *v.* Moore, 7 Peters, 460; Bald. 424.
- 5 Hollister *v.* Union Co. 9 Conn. 436; Lansing *v.* Smith, 8 Cowen, 146.
- 6 Coates *v.* New York, 7 Cowen, 585; Presb. Church *v.* N. Y. 5 Cow.
533. And see Lake View *v.* Rose Hill Cemetery, 70 Ill. 191.
- 7 Barton's Appeal, 57 Pa. St. 213.
- 8 Richardson *v.* Monson, 23 Conn. 94.
- 9 Mulligan *v.* Corbins, 7 Wall. 437.
- 10 Watson *v.* Mercer, 8 Peters, 88; Raverty *v.* Fudge, 3 McLean, 230; Dentzell *v.* Waldie, 30 Cal. 133; Bethune *v.* Dougherty, 30 Ga. 770; Dulaney *v.* Milghman, 6 Gill. & J. 431; Hughes *v.* Cannon, 2 Humph. 530; Brinton *v.* Sievers, 12 Iowa, 330; Maxcy *v.* Wise, 25 Ind. 1; Bell *v.* Perkins, Peck, Tenn. 261; Barton *v.* Norris, 15 Ohio, 403; Chestnut *v.* Shane, 15 Ohio, 539; Journeay *v.* Gibson, 53 Pa. St. 57; Barnett *v.* Barnett, 15 Serg. & R. 72; Tate *v.* Stooltzfoos, 16 Serg. & R. 35. And see Pearce *v.* Patton, 7 B. Mon. 162.
- 11 Jackson *v.* Lamphire, 3 Peters, 230; Stafford *v.* Lick, 7 Cal. 479; Tucker *v.* Harris, 13 Ga. 1; Boston *v.* Commissioners, 13 Ga. 102; Succession of Nelson, 24 La. Ann. 25; Rochercau *v.* Delacroix, 26 La. An. 54; Varrick *v.* Briggs, 6 Paige, 323; 2 Wend. 543; Miles *v.* King, 5 Rich. N. S. 143.
- 12 Williams *v.* Norris, 12 Wheat. 117.
- 13 McGee *v.* Mathis, 4 Wall. 156.

**Vested rights.**—A right is vested when it has already become a title legal or equitable,<sup>1</sup> and the legislature has no power to divest titles,<sup>2</sup> or legal or equitable rights previously vested,<sup>3</sup> or to vest them in another;<sup>4</sup> so, vested rights acquired by a statute granting new remedies, or enlarging old ones, are beyond the reach of the legislature, and the repeal of the statute will not affect them.<sup>5</sup> The legislature cannot take away vested rights, nor create a cause of action for which there was no remedy at the time of its occurrence.<sup>6</sup> Even if rights have grown up under a law of somewhat ambiguous meaning, the legislature cannot interfere with them,<sup>7</sup> but an *ex post facto* law which does not apply to crimes, impair the obligation of contracts, or divest vested rights, is not unconstitutional.<sup>8</sup> An act of the legislature is not to be construed to operate retrospectively so as to take away a vested right.<sup>9</sup> A statute is not objectionable because it purports to operate on

prior contingent or qualified rights, but only where it operates on vested rights,<sup>10</sup> acquired under existing laws.<sup>11</sup> A State may pass a retrospective law impairing her own rights.<sup>12</sup> If an act of the legislature is within the legislative power it is not a valid objection to it that it divests vested rights. Such an act is not within the constitutional prohibition, however repugnant it may be to the principles of sound legislation.<sup>13</sup>

1 *Richardson v. Akin*, 87 Ill. 133.

2 *Helm v. Webster*, 83 Ill. 116.

3 *Bunn v. Morrison*, 5 Ark. 217; *Grissom v. Hill*, 17 Ark. 489.

4 *Koenig v. Omaha &c. R. R. Co.* 3 Neb. 383.

5 *Memphis v. U. S.* 97 U. S. 293.

6 *Coosa Riv. R. R. Co. v. Barclay*, 30 Ala. 120.

7 *McLeod v. Burroughs*, 9 Ga. 213.

8 *New Orleans v. Pontz*, 14 La. An. 853; *New Orleans v. Cordivolle*, 13 *Ibid.* 260; *Bay v. Gage*, 33 Barb. 447; *Hinton v. Hinton*, Phill. (N. C.) 410; *Tilton v. Swift*, 40 Iowa, 73; *Lane v. Nelson*, 79 Pa. St. 407.

9 *Dash v. Vankleck*, 7 Johns. 477.

10 *Clarke v. McCreary*, 40 Miss. 347.

11 *Society &c. v. Wheeler*, 2 Gall. 139. And see *Nelson v. Allen*, 1 Yerg. 360; *Officer v. Young*, 5 Yerg. 320.

12 *Davis v. Dawes*, 4 Watts & S. 401.

13 *Lane v. Nelson*, 79 Pa. St. 407.

**Impairment of rights.**—If the right be impaired by a subsequent statute the law is void,<sup>1</sup> but the repeal of a statute before a party has taken all the steps necessary to give him a right under it does not impair the right.<sup>2</sup> A statute requiring the submission of a claim under a contract before a board of examiners for approval is void;<sup>3</sup> so, a prohibition to sue is an impairment of the obligation,<sup>4</sup> as a statute prohibiting persons aiding the Rebellion from prosecuting or defending actions.<sup>5</sup> A provision in a constitution that prohibits the enforcement of a contract for slaves is void;<sup>6</sup> or that deprives a creditor of his remedy on a judgment against a municipal corporation forever, unless the legislature shall provide for its payment;<sup>7</sup> so, a retrospective law depriving a party of his right to enforce a contract, if taxes have not been paid, is void.<sup>8</sup> A statute prohibiting the transfer of choses in action, and any action thereon after the transfer, is unconstitutional.<sup>9</sup> The right to institute ejectment is part of the mortgage contract, and cannot be prohibited by statute;<sup>10</sup> so, a statute which deprives a person of his right to recover a rent previously paid to the marshal is unconstitutional.<sup>11</sup> The right of a purchaser to a tax-sale deed cannot be

taken away by subsequent legislation.<sup>12</sup> An act empowering courts and juries to remit interest is void as to prior contracts.<sup>13</sup>

1 *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608; *Von Hoffman v. Quincy*, 4 Wall. 535.

2 *Van Horne v. Dorrance*, 2 Dall. 304; *Mobile R. R. Co. v. State*, 29 Ala. 573; *Brinsfield v. Carter*, 2 Ga. 143; *Wise v. Rogers*, 24 Gratt. 169; *Huntsman v. Randolph*, 5 Hayw. 263; *State v. Gray*, 4 Wis. 380.

3 *McCauley v. Brooks*, 16 Cal. 11.

4 *Beers v. Arkansas*, 20 How. 527; *Scarborough v. Dugan*, 10 Cal. 306.

5 *Davis v. Pierse*, 7 Minn. 13; *McFarland v. Butler*, 8 Minn. 116; *Jackson v. Butler*, 8 Minn. 117.

6 *Whits v. Hart*, 13 Wall. 646; 39 Ga. 306; *French v. Tomlin*, 19 Am. Law Reg. 641; *Jacoway v. Denton*, 25 Ark. 625; *McNealy v. Gregory*, 13 Fla. 417. But see *Shorter v. Cobb*, 31 Ga. 285; *Armstrong v. Lecompte*, 21 La. An. 528; *Dranguet v. Rost*, 21 La. An. 538.

7 *Hadfield v. N. Y.* 6 Robt. 501.

8 *Walker v. Whitehead*, 16 Wall. 314; 43 Ga. 537; *Lathrop v. Brown*, 1 Woods, 474; *Griffiths v. Shipp*, 49 Ga. 231; *Kimb o v. Bank*, 49 Ga. 419; *Mitchell v. Cothrans*, 49 Ga. 125; *Gardner v. Jeter*, 49 Ga. 195; *Dougherty v. Fogle*, 50 Ga. 464.

9 *Planters' Bank v. Sharp*, 6 How. 301; 12 Miss. 17; *Jemison v. Planters' Bank*, 23 Ala. 168; *Montgomery v. Galbraith*, 19 Miss. 555; *McIntyre v. Ingraham*, 35 Miss. 25; *Grand Gulf R. R. Co. v. State*, 18 Miss. 428. And see *Hyde v. Planters' Bank*, 8 Rob. (La.) 416.

10 *Mundy v. Monroe*, 1 Mich. 68.

11 *Clark v. Mitchell*, 64 Mo. 564.

12 *Bruce v. Schnyler*, 4 Gilm. 221.

13 *Roberts v. Cocke*, 28 Gratt. 207; *Cecil v. Deyerle*, *Ibid.* 775; *Kent v. Kent*, *Ibid.* 840; *Pretlow v. Bailey*, 29 Gratt. 212.

**What not an impairment of rights.**—A statute may provide that no suit shall be brought on a promise except it be in writing,<sup>1</sup> or may allow suits on an official bond instead of *scire facias* on the judgment,<sup>2</sup> or may repeal a law which prohibited suits against Indians.<sup>3</sup> A statute may require a creditor to exhaust his securities before bringing suit on his claim,<sup>4</sup> or may require holders of certificates of purchase to give notice to occupants of land of his intent to apply for a deed a certain time before his application,<sup>5</sup> or may require suitors to take a test oath of loyalty.<sup>6</sup> A statute may enact that suit must be brought in the name of the real party.<sup>7</sup> A statute may allow the holder of a detached coupon to sue thereon,<sup>8</sup> or may allow a purchaser to recover money paid for taxes and costs,<sup>9</sup> or may authorize the grantee of a rent charge to sue at law in his own name,<sup>10</sup> or allow an administrator *de bonis non* to sue, in the name of the State, on the bond of his predecessor,<sup>11</sup> or may allow one firm to sue another, although some are members of both firms,<sup>12</sup> or may

authorize one plaintiff to recover, although the other does not establish his title,<sup>13</sup> or may authorize the assignee of a chose in action to sue in his own name,<sup>14</sup> or may render a party liable to suit by repeal of an act under which he was exempt,<sup>15</sup> or may require that the maker and indorser of a note be sued in a joint action.<sup>16</sup> A statute may authorize an administrator to apply to the court for the sale of real estate of an intestate to pay his debts,<sup>17</sup> or may allow a guardian to sell real estate and invest proceeds in other securities,<sup>18</sup> or may discharge a testamentary trustee on his own request and appoint another.<sup>19</sup> A statute may grant the right to an appeal, or allow appeal without security for costs, or permit one of several to appeal,<sup>20</sup> or may take away the right of appeal,<sup>21</sup> or may authorize the filing of a bill of review,<sup>22</sup> or may allow a new trial or an appeal;<sup>23</sup> but a statute declaring a judgment void, and granting a new trial, is void;<sup>24</sup> yet a law affecting judgments not rendered on a contract is valid.<sup>25</sup> A statute may provide that no *scire facias* shall be issued to revive a dormant judgment.<sup>26</sup> A debtor in default has no vested right to have his property sold in any particular way.<sup>27</sup> A statute may change the law of costs as to pending judgments,<sup>28</sup> but not as to rights already vested,<sup>29</sup> or may reduce costs below the legal amount, or deny them altogether.<sup>30</sup>

1 *Kingsley v. Cousins*, 49 Me. 91.

2 *White v. Wilkins*, 24 Me. 299.

3 *Stokes v. Rodman*, 5 R. I. 405.

4 *Swift v. Fletcher*, 6 Minn. 530.

5 *Curtis v. Whitney*, 13 Wall. 68.

6 *Belrne v. Brown*, 4 West Va. 72.

7 *Hancock v. Ritchie*, 11 Ind. 48.

8 *Augusta Bank v. Augusta*, 49 Me. 507.

9 *Smith v. Merchand*, 7 Serg. & R. 260.

10 *Van Rensselaer v. Hays*, 19 N. Y. 68.

11 *Graham v. State*, 7 Ind. 470.

12 *Hepburn v. Curts*, 7 Watts, 300.

13 *Hinckle v. Riffert*, 6 Pa. St. 196.

14 *Harlan v. Sigler*, Morris, 39; *Ford v. Hale*, 1 Mon. 23.

15 *Stokes v. Rodman*, 5 R. I. 405.

16 *McMillan v. Sprague*, 4 How. (Miss.) 647.

17 *Florentine v. Barton*, 2 Wall. 210. And see *Brenham v. Story*, 39 Cal. 179; *Rozier v. Fagan*, 46 Ill. 404.

18 *Lobrano v. Nelligan*, 9 Wall. 295.

19 *Williamson v. Suydam*, 6 Wall. 723.



20 *Todd v. Neal*, 49 Ala. 266; *Wilder v. Lumpkin*, 4 Ga. 203; *Converse v. Burrows*, 2 Minn. 229; *Davis v. Ballard*, 1 J. J. Marsh. 563; *Braddee v. Brownfield*, 2 Watts & S. 271.

21 *Grover v. Coon*, 1 N. Y. 536.

22 *Sampereac v. U. S.* 7 Peters, 222.

23 *Calder v. Bull*, 3 Dall. 336; *Baltimore &c. R. R. Co. v. Nesbit*, 10 How. 395; *League v. De Young*, 11 How. 185; *Colby v. Dennis*, 36 Me. 9; *Page v. Matthews*, 40 Ala. 547.

24 *Weaver v. Lapsley*, 43 Ala. 224.

25 *Sprott v. Reid*, 3 G. Greene, 489.

26 *Parker v. Shannonhouse*, Phillips (N. C.) 209.

27 *Tuolumne Redemp. Co. v. Sedgwick*, 15 Cal. 515.

28 *Taylor v. Keeler*, 30 Conn. 324.

29 *State v. Auditor*, 33 Miss. 287.

30 *Free v. Howorth*, 19 Ind. 404; *Potter v. Sturdevant*, 4 Me. 154; *Rader v. S. R. Dist.* 36 N. J. 273.

**Corporations.**—If the foundation of a corporation is private, though under the charter of the Government, the corporation is valid.<sup>1</sup> A corporation may be private, and yet the charter may contain provisions of a purely public character,<sup>2</sup> and a bounty may as well be bestowed on a private as on a public corporation.<sup>3</sup> Where the property of a corporation is private, it is a private corporation;<sup>4</sup> but where the whole interests and franchises are the exclusive property and domain of the Government, it is a public corporation.<sup>5</sup> A corporation created for the purpose of investing school funds for a town is a private corporation.<sup>6</sup> An act which impairs the charter by enlarging the powers of the State over the body corporate, or by abridging the franchise, or by altering the charter, is void;<sup>7</sup> so, a statute passed after granting the charter, annexing a cause of forfeiture unknown to the charter, is unconstitutional.<sup>8</sup> The grant of an annual appropriation in a charter, in consideration of subscriptions by private individuals, is a contract, and cannot be repealed.<sup>9</sup> The legislature may require a corporation to make annual reports,<sup>10</sup> or may require a certain proportion of its officers to reside in the State,<sup>11</sup> or may make a failure to comply with police regulations a ground for forfeiture of charter,<sup>12</sup> or may change the mode of assessing its property.<sup>13</sup> A corporation is subject to legislative control where it is a mere instrument or agent of the State,<sup>14</sup> but the legislature cannot subject a corporation to forfeiture of its franchise for any cause not sufficient when such corporation was created.<sup>15</sup> A State may revive a corporation and legalize contracts

made by it after forfeiture of its charter, or it may transfer the property of an insolvent corporation to a new one.<sup>16</sup> It may provide for a receiver upon dissolution of the corporation.<sup>17</sup> The dissolution does not impair the obligation of its contracts.<sup>18</sup>

1 *Dartmouth Coll. v. Woodward*, 4 Wheat. 518; *Trustees v. State*, 14 How. 264; 2 Ind. 293; *Allen v. McKean*, 1 Sum. 276; *Louisville v. University*, 15 B. Mon. 642; *Regents v. Williams*, 9 Gill. & J. 365; *Trustees v. Bradbury*, 11 Me. 118; *Yarmouth v. Yarmouth*, 34 Me. 411; *Brown v. Hummel*, 6 Pa. St. 86; *Plymouth v. Jackson*, 15 Pa. St. 44; *State v. Heyward*, 3 Rich. 389.

2 *Regents v. Williams*, 9 Gill. & J. 365.

3 *Allen v. McKean*, 1 Sum. 276; *Louisville v. University*, 15 B. Mon. 642; *Regents v. Williams*, 9 Gill. & J. 365; *Montgomery Acad. v. George*, 14 La. 395; *Sheriff v. Lowndes*, 16 Md. 357; *Richardson v. Brown*, 6 Me. 355; *Yarmouth v. Yarmouth*, 34 Me. 411; *State v. Heyward*, 3 Rich. 389.

4 *Piqua State Bank v. Knoop*, 16 How. 369; 6 Ohio St. 342.

5 *Dartmouth Coll. v. Woodward*, 4 Wheat. 578; *Allen v. McKean*, 1 Sum. 276; *Regents v. Williams*, 9 Gill. & J. 365; *University v. Maultsby*, 8 Ired. Eq. 257.

6 *Trustees v. Bradbury*, 11 Me. 118.

7 *Phila. & c. R. R. Co. v. Bowers*, 4 Houst. 506; *Commercial Bank v. State*, 14 Miss. 439.

8 *Washington Br. Co. v. State*, 18 Conn. 53; *People v. Plankroad Co.*, 9 Mich. 235; *Aurora T. Co. v. Holthouse*, 7 Ind. 59; *State v. Tombeckbee Bank*, 2 Stew. 30.

9 *Visitors v. State*, 15 Md. 330.

10 *State v. S. P. R. R. Co.* 24 Tex. 80.

11 *State v. S. P. R. R. Co.* 24 Tex. 80.

12 *State v. S. P. R. R. Co.* 24 Tex. 80. The provisions of a charter cannot exempt a corporation or its officers from regulations made in the exercise of police powers of the State—*Cummings v. Spaunhorst*, 5 Mo. Ct. App. 21.

13 *Bank v. Hamilton*, 21 Ill. 53.

14 *Louisville v. University*, 15 B. Mon. 642; *Lincoln Bank v. Richardson*, 1 Me. 79; *Bleakney v. Farmers' Bank*, 17 Serg. & R. 64; *Officer v. Young*, 5 Yerg. 320.

15 *State v. Tombeckbee Bk.* 2 Stew. 30.

16 *Mudge v. Commissioners*, 10 Rob. (La.) 460.

17 *Carey v. Giles*, 9 Ga. 253; *Searcey v. Stubbs*, 12 Ga. 437; *Hall v. Carey*, 5 Ga. 253; *Aurora T. Co. v. Holthouse*, 7 Ind. 59; *Read v. Frankfort Bank*, 23 Me. 318; *Sav. Inst. v. Maken*, 23 Me. 360; *Leathers v. Shipbuilders' Bank*, 40 Me. 386; *Nevitt v. Bank*, 14 Miss. 513; *Suydam v. Receivers*, 3 N. J. Eq. 314; *Bank of Columbia v. Att. Gen.* 3 Wend. 588.

18 *Mumma v. Potomac Co.* 8 Peters, 281.

**Corporate liability.**—A statute may render the corporation liable for its debts,<sup>1</sup> or may render the stockholders personally liable,<sup>2</sup> or may relieve stockholders who subsequently subscribed from personal liability.<sup>3</sup> A statute repealing a law imposing a personal liability on stockholders cannot affect debts contracted before its passage.<sup>4</sup> A statute may subject the property and franchise of the corporation to the payment of its debts,<sup>5</sup> or may provide means for enforcing debts against it.<sup>6</sup> Where a statute enacts that a corporation shall be responsible for its debts, rights acquired while it is in force cannot be impaired.<sup>7</sup> A State cannot enact that a writ of sequestration shall not issue, unless the corporation is guilty of mismanagement or willful delay in discharging its liabilities.<sup>8</sup> The legislature may render a corporation liable to suit in any county if it does not injuriously affect its corporate rights.<sup>9</sup> It may provide that a corporation be sued in the county where a tort by it committed, occurs.<sup>10</sup> It may give to a legal representative a right of action for injuries sustained,<sup>11</sup> or may take from a creditor the right to proceed against stockholders and vest such right in a trustee,<sup>12</sup> or may modify and control summary proceedings against stockholders,<sup>13</sup> or may change the mode of process against the corporation,<sup>14</sup> or may allow attachment of property in hands of stockholder without previously exhausting the assets of the corporation.<sup>15</sup> A statute may authorize a corporation to sue in its own name.<sup>16</sup>

<sup>1</sup> *Peters v. Railroad Co.* 23 Mo. 167; *Grannahan v. Railroad Co.* 30 Mo. 546.

<sup>2</sup> *Coffin v. Rich*, 45 Me. 507; *Stanley v. Stanley*, 26 Me. 191; *Gray v. Coffin*, 63 Mass. 192.

<sup>3</sup> *Ochiltree v. Railroad Co.* 21 Wall. 249.

<sup>4</sup> *Hawthorne v. Calif.* 2 Wall. 10; *Conant v. Van Schaick*, 24 Barb. 87. But see *Coffin v. Rich*, 45 Me. 507; *Richardson v. Akin*, 87 Ill. 138.

<sup>5</sup> *Louisville T. Co. v. Lounsberry*, 2 Met. (Ky.) 165.

<sup>6</sup> *Foster v. Essex Bank*, 16 Mass. 245.

<sup>7</sup> *Strubel v. Milwaukee &c. R. R. Co.* 12 Wis. 67.

<sup>8</sup> *Penrose v. Erie Can. Co.* 56 Pa. St. 46.

<sup>9</sup> *Howard v. Insurance Co.* 13 B. Mon. 282; *Sanders v. Hillsborough Ins. Co.* 44 N. H. 238.

<sup>10</sup> *Davis v. Central R. R. Co.* 17 Ga. 323.

<sup>11</sup> *Board v. Searce*, 2 Duval, 576; *Southwestern R. R. Co. v. Paulk*, 24 Ga. 356.

<sup>12</sup> *Story v. Furman*, 25 N. Y. 214.

<sup>13</sup> *Ex parte Northeast R. R. Co.* 37 Ala. 679.

<sup>14</sup> *Cairo &c. R. R. Co. v. Hecht*, 29 Ark. 661.

<sup>15</sup> *Smith v. Bryan*, 34 Ill. 264.

<sup>16</sup> *Crawford v. Bank*, 7 How. 279.

**Corporate franchises.**—A grant of a franchise is not distinguishable from a grant of other property.<sup>1</sup> The benefit derived to the community is the consideration,<sup>2</sup> of the sufficiency of which the legislature is the exclusive judge.<sup>3</sup> A charter is a contract between the State and the stockholders, both executed and executory,<sup>4</sup> and every valuable privilege given by the charter is a contract.<sup>5</sup> No consideration is necessary to render the grant irrevocable.<sup>6</sup> A charter is a stipulation that the powers specially granted are not to be withdrawn or diminished,<sup>7</sup> and the implied powers conferred are as sacred as those expressly given,<sup>8</sup> and these are implied from those given.<sup>9</sup> Such contracts are to be construed liberally,<sup>10</sup> but nothing can be taken by intendment against the State.<sup>11</sup> Where the right under the charter is claimed by construction, only the scope and evident design of all the provisions of the charter must be considered.<sup>12</sup> Where the instrument is susceptible of two meanings, that which works least harm to the State is to be adopted.<sup>13</sup> The exercise of a corporate franchise being restrictive of individual rights, it cannot be extended beyond the letter and spirit of the act of incorporation.<sup>14</sup> If the charter allows a reasonable time to comply with the conditions whereby it may obtain interest in land, the legislature cannot shorten that time or impose any liability if it choose to avail itself of all the time allowed.<sup>15</sup> A general law for the organization of corporations is a special act as to each corporation.<sup>16</sup> The legislature cannot contravene the provisions of the charter,<sup>17</sup> and any variation in the grant of a franchise violates;<sup>18</sup> but mere endowments of existence are held subject to the control and modification of the legislature.<sup>19</sup> So, the legislature may reserve the right to amend, alter, or repeal the terms of the franchise.<sup>20</sup> The right to withdraw a franchise includes every power or privilege which is a part of the franchise.<sup>21</sup>

1 *Dartmouth College v. Woodward*, 4 Wheat. 518; *Benson v. N. Y.* 10 Barb. 223; *Enfield Br. Co. v. Conn. Riv. Co.* 7 Conn. 28; *Derby T. Co. v. Parks*, 10 Conn. 522; *Washington Br. Co. v. State*, 18 Conn. 53; *Canal Co. v. Railroad Co.* 4 Gill & J. 1.

2 *Dartmouth College v. Woodward*, 4 Wheat. 518; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Regents v. Williams*, 9 Gill & J. 365.

3 *Piqua Bank v. Knoop*, 16 How. 369; 6 Ohio St. 342.

4 *Dartmouth College v. Woodward*, 4 Wheat. 656; *McGee v. Mathis*, *Ibid.* 143; *Fletcher v. Peck*, 6 Cranch, 87; *Terrett v. Taylor*, 9 Cranch, 43; *Town of Pawlett v. Clark*, 9 Cranch, 292; *Piqua Bank v. Knoop*, 16 How. 369; *Dodge v. Woolsey*, 18 How. 331; *Mechanics & Farmers' Bank v. Debolt*, 13 How. 380; *Mechanics & Farmers' Bank v. Thomas*, 18 How. 384; *Skelly v. Jefferson Bank*, 1 Black, 436; *Matheny v. Golden*, 5 Ohio St. 361; *Ross Co. Bank v. Lewis*, 5 Ohio St. 447; *Allen v. Buchanan*, 20 Pitts. L. J. 128; *Providence Bank v. Billings*, 4 Peters, 514;

*Bank v. Sharp*, 6 How. 311; *State*, 15 How. 304; *Fur-  
case*, 3 Wall. 72; *Home  
&c. R. R. Co. v. Iowa*,  
116; *Dodge v. Woolsey*,  
236; *Enfield Br. Co. v.*  
*Conn. Rly. Co.*, 1 Dong. 225, 9 Ga.  
; *Bank of Pennsylvania  
R. R. Co. v. Gill & J.*  
*Agents v. Williams*, 9  
333; *People v. Mayor  
v. Fear*, 13 Ired. 75, 21  
*Co. v. Bowers*, 4 Houst.  
1) 324; *Olive v. Lee's*  
7; *Backus v. Lebanon*,  
5 Wall. 495, 1 Dill. 238;

- 5 *Piqua Bank v. Knoop*, 16 How. 369; 6 Ohio St. 342.
- 6 *Derby Turnpike Co. v. Parks*, 10 Conn. 522.
- 7 *Commonwealth v. Farmers' Bank*, 38 Mass. 542; *Thorpe v. Burling-  
ton &c. R. R. Co.* 27 Vt. 140.
- 8 *Commercial Bank v. State*, 12 Miss. 439; *People v. Manhattan Co.*  
9 Wend. 351.
- 9 *Payne v. Baldwin*, 11 Miss. 681; *Commercial Bank v. State*, 12 Miss.  
439.
- 10 *Binghampton Bridge v. Chenango Bridge*, 3 Wall. 74; 27 N. Y. 87.
- 11 *Charles Riv. Br. v. Warren Br.* 11 Peters, 544; *Jefferson Br. Bank  
v. Skelly*, 1 Black, 448.
- 12 *Mayaville T. Co. v. How*, 14 B. Mon. 426.
- 13 *Binghampton Bridge v. Chenango Br.* 3 Wall. 51; 27 N. Y. 87.
- 14 *Providence Bank v. Billings*, 4 Peters, 514; *Charles Riv. Br. v.*  
*Warren Br.* 11 Peters, 420; *Mills v. St. Clair Co.* 8 How. 569; *Planters'  
Bank v. Sharp*, 6 How. 301; 12 Miss. 17; *Ohio Trust. Co. v. Debolt*, 16  
How. 416, 1 Ohio St. 563; *Richmond R. R. Co. v. Louisa R. R. Co.* 13  
How. 71; *Enfield Br. Co. v. Conn. Rly. Co.* 7 Conn. 28; *Hartford Br. Co.  
v. East Hartford*, 16 Conn. 145; *Hartford Br. Co. v. Union Ferry Co.* 29  
Conn. 210; *McLeod v. Burroughs*, 9 Ga. 213; *Turnpike Co. v. Railroad  
Co.* 19 Gill & J. 302; *Tuckahoe Can. Co. v. Railroad*, 11 Leigh, 42; *Col-  
lins v. Sherman*, 31 Miss. 679.
- 15 *Nichols v. S. & K. R. R. Co.* 43 Me. 356.
- 16 *Piqua Bank v. Knoop*, 16 How. 369; 6 Ohio St. 342.
- 17 *State v. Noyes*, 47 Me. 189. Nor can it impair rights thereunder  
unless it provides indemnity—*Enfield Br. Co. v. Conn. Rly. Co.* 7  
Conn. 28.
- 18 *Enfield Br. Co. v. Conn. Rly. Co.* 7 Conn. 28.
- 19 *Bank v. Hamilton*, 21 Ill. 53.
- 20 *Peck v. Chicago & N. W. R. R. Co.* 6 Blas. 181; *Griffin v. Kentucky  
Ins. Co.* 3 Bush, 592; *Commonwealth v. Fayette Co. R. R. Co.* 55 Pa. St.  
432; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Butler v. Walker*, 60 Ill. 345;  
*Trustees of University v. Winston*, 5 Stewt. & P. 17.
- 21 *Central R. R. & B. Co. v. Georgia*, 54 Ga. 420; *Atlantic & Gulf R.  
R. Co. v. Georgia*, 7 Reporter, 324.

**Exemption from taxation.**—The exemption of a corporation from taxation must be clear and express.<sup>1</sup> It is not necessary that a bonus should be received to make the contract binding.<sup>2</sup> A provision exempting a corporation from taxation applies not merely to the State, but to every public corporation created by it.<sup>3</sup> So long as a corporation uses its property for its original purposes the exemption continues.<sup>4</sup> The exemption includes all that is obviously appropriate and convenient to carry into effect the franchise granted, and to its objects and its use,<sup>5</sup> including real and personal estate requisite for the successful prosecution of its business.<sup>6</sup> Exemption from all taxation includes exemption from a privilege tax,<sup>7</sup> but not from an assessment for benefits arising from opening or improvement of a street.<sup>8</sup> A privilege that a certain rate of taxes shall be paid in lieu of all taxes to the State does not exempt from liability for municipal taxes<sup>9</sup> nor from a school tax.<sup>10</sup> Merely exempting from taxation without consideration is not a contract, and may be repealed.<sup>11</sup> A provision exempting a corporation from taxation applies to its property as well as to its franchise,<sup>12</sup> but not to its bonds.<sup>13</sup> If a charter merely exempts the corporation and its property the exemption does not pass to a party who purchases property at a sale under mortgage or execution;<sup>14</sup> but if the State makes immunity from taxation transferable, it cannot tax property in the hands of a purchaser.<sup>15</sup> If the charter stipulates for exemption of the property from taxes, no tax can be assessed thereon,<sup>16</sup> if all property is used for necessary purposes; and property not so used may be taxed,<sup>17</sup> but not property used, although it may be used by others.<sup>18</sup> If the charter authorizes to build and rent a building, it exempts the property leased as stores.<sup>19</sup> Exempting the property of a corporation exempts its franchise.<sup>20</sup> If the right is reserved to alter the charter the right to tax is conferred.<sup>21</sup>

1 *Providence Bank v. Billings*, 4 Peters, 514; *Portland Bank v. Apthorpe*, 12 Mass. 252; *Herrick v. Randolph*, 13 Wall. 531; *Judson v. State*, Minor, 150; *North Mo. R. R. Co. v. Maguire*, 20 Wall. 46; 42 Mo. 490; *Erle R. Co. v. Pennsylvania*, 21 Wall. 492; *Jones & Co. v. Comm.* 60 Pa. St. 137.

2 *Piqua Bank v. Knoop*, 16 How. 369; 6 Ohio St. 342.

3 *Mayor v. Balt. & C. R. R. Co.* 6 Gill, 283; *Richmond v. R. & C. R. R. Co.* 21 Gratt. 604; *Bank of Cape Fear v. Edwards*, 5 Ired. 516; *State Bank v. Charleston*, 3 Rich. 342.

4 *Washington Univer. v. Rouse*, 8 Wall. 439; 42 Mo. 303.

5 *State v. Georgia R. R. & B. Co.* 54 Ga. 423; *State v. Mansfield*, 23 N. J. 510; *State v. Flavell*, 24 N. J. 370; *State v. Powers*, 24 N. J. 400; *State v. Blundell*, 24 N. J. 402; *State v. Haight*, 25 N. J. 40; *State v. Collector*,

23 N. J. 519; *Cook v. State*, 33 N. J. 474; *State v. Hancock*, 35 N. J. 537; *State v. Woodruff*, 36 N. J. 94; *State v. Collector*, 38 N. J. 270.

6 *Wilmington &c. R. R. Co. v. Reed*, 13 Wall. 264.

7 *Grand Gulf &c. R. R. Co. v. Buck*, 53 Miss. 246.

8 *State Home Soci. v. Mayor*, 35 N. J. 157; *City v. Society*, 24 N. J. 385; *Mayor v. Proprietors*, 7 Md. 517; *Sheehan v. Good Samar. Hosp.* 50 Mo. 155. But see *St. Paul &c. R. R. Co. v. St. Paul*, 21 Minn. 526; *State v. Newark*, 37 N. J. 185.

9 *Lexington v. Aull*, 30 Mo. 480; *Paris v. Farmers' Bank*, 30 Mo. 575; *City v. Hannibal &c. R. R. Co.* 39 Mo. 476; *Pac. R. R. Co. v. Cass*, 53 Mo. 17.

10 *Livingston v. Hannibal &c. R. R. Co.* 60 Mo. 516.

11 *St. Louis &c. R. R. Co. v. Loftin*, 10 Ark. 693; *Holly Springs &c. Co. v. Marshall*, 52 Miss. 281; *Sandusky Bank v. Wilbor*, 7 Ohio St. 431; *People v. Commissioners*, 47 N. Y. 501; 53 Barb. 70; *Hospital v. Philadelphia*, 24 Pa. St. 229; *State v. County Treas.* 4 Rich. N. S. 520; *Jones &c. v. Comm.* 69 Pa. St. 137. So, a promised forbearance from taxation is only a bounty or gratuity—*Prov. Bank v. Billings*, 4 Wheat. 316; *Fertilizing Co. v. Hyde Park*, 97 U. S. 636.

12 *Camden &c. R. R. Co. v. Commissioners*, 18 N. J. 71. But see *Municipality v. Commercial Bank*, 5 Rob. (La.) 151.

13 *State v. Branin*, 23 N. J. 494.

14 *Morgan v. Louisiana*, 93 U. S. 217; *Trask v. Maguire*, 18 Wall. 391.

15 *St. Paul &c. R. R. Co. v. Parcher*, 14 Minn. 297; *State v. Winona &c. R. R. Co.* 21 Minn. 315; *A. &c. R. R. Co. v. Allen*, 15 Fla. 15.

16 *Hardy v. Waltham*, 24 Mass. 198.

17 *State v. Love*, 37 N. J. 60.

18 *State v. Betts*, 24 N. J. 555.

19 *State v. Leester*, 29 N. J. 541.

20 *Wilmington R. R. Co. v. Reid*, 13 Wall. 264.

21 *Union Imp. Co. v. Comm.* 69 Pa. St. 140; *Comm. v. Fayette Co. R. R.* 55 Pa. St. 452; *Iron City Bank v. Pittsburg*, 37 Pa. St. 340; *Hewitt v. N. Y. &c. R. R. Co.* 12 Blatchf. 467.

**Exemption from taxation.**—If the charter exempts the capital stock it extends to additional capital permitted under subsequent acts.<sup>1</sup> If the stock is exempted the State cannot levy a tax on the property held by the corporation;<sup>2</sup> but if the charter makes a distinction between the capital stock and the property, a tax may be laid on the property though the stock is exempt;<sup>3</sup> but it does not exonerate the dividends of shareholders.<sup>4</sup> So, a contract exempting the franchise will not exempt stockholders.<sup>5</sup> A provision exempting a bank from further taxation exempts the stockholders;<sup>6</sup> so, if a corporation is exempt from taxation the State cannot tax the shares of the stockholders;<sup>7</sup> and if shares are exempted, an act imposing a tax on franchise or property is invalid.<sup>8</sup> The mere reservation of a sum to be paid annually does not contain an implied contract that no further tax shall be imposed.<sup>9</sup> If the charter stipulates for an annual payment in lieu of

all taxation, the amount cannot be subsequently increased.<sup>10</sup> The legislature may prescribe a bonus to be paid in commutation of all taxes on its corporate stock and property.<sup>11</sup> A provision fixing the mode of assessment does not preclude the adoption of another mode;<sup>12</sup> but a limitation to a particular mode includes a negative of any other mode.<sup>13</sup> A corporation may yield a part of the exemption, and accept other terms in lieu thereof;<sup>14</sup> but if a charter is renewed without renewal of the exemption, the power of taxation is revived.<sup>15</sup> Where the tax is to be levied on the happening of some future contingency no tax can be levied prior to that time.<sup>16</sup> A law offering a bounty for manufacturing and freed from taxation is not a contract.<sup>17</sup>

1 *State v. N. &c. R. R. Co.* 30 Conn. 290.

2 *New Haven v. City Bank*, 31 Conn. 106; *Ordinary v. Centr. R. R. Co.* 40 Ga. 646; *Tax Cases*, 12 Gill & J. 117.

3 *St. Louis &c. R. R. Co. v. Lofton*, 30 Ark. 693

4 *State v. Petway*, 2 Jones Eq. 396.

5 *Gordon v. Appeal Tax Ct.* 3 How. 133; 5 Gill, 231.

6 *Gordon v. Appeal Tax Ct.* 3 How. 133; 5 Gill, 231.

7 *State v. Branin*, 23 N. J. 484; *State v. Powers*, 24 N. J. 400; *Staté v. Bentley*, 23 N. J. 532.

8 *Mayor v. Balt. &c. R. R. Co.* 6 Gill, 288; *Nichols v. N. H. & N. Co.* 42 Conn. 103; *Hannibal &c. R. R. Co. v. Chacklett*, 30 Mo. 550; *State v. Hannibal &c. R. R. Co.* 37 Mo. 265.

9 *Delaware R. R. Tax*, 18 Wall. 206; *Minot v. P. W. &c. R. R. Co.* 2 Abb. U. S. 323; *Union Bank v. State*, 9 Yerg. 490.

10 *Piqua Bank v. Knoop*, 16 How. 367; *Dodge v. Woolsey*, 18 How. 331; 6 McLean, 142; *Mechanics' Bank v. Debolt*, 18 How. 350; 1 Ohio St. 591; *Mechanics' Bank v. Thomas*, 13 How. 384; *Franklin Bank v. State*, 1 Black, 474; *Jefferson Bank v. Skelly*, 1 Black, 436; 9 Ohio St. 606; *Wright v. Sill*, 2 Black, 544; *Gordon v. Appeal Tax Ct.* 3 How. 133; 5 Gill, 231; *Farmers' Bank v. Commonwealth*, 6 Bush. 126; *Attorney-General v. Bank of Charlotte*, 4 Jones Eq. 287; *Leroy v. East S. C. R.* 18 Mich. 233; *State v. Commissioners*, 37 N. J. 240; *State v. Commercial Bank*, 7 Ohio, 125; *Matheny v. Golden*, 5 Ohio St. 361. And see *Minot v. P. W. &c. R. R. Co.* 2 Abb. U. S. 323; 18 Wall. 206; *Mayor v. Balt. &c. R. R. Co.* 6 Gill. 288.

11 *Draughdrill v. Ala. &c. T. Co.* 31 Ala. 91.

12 *Balley v. Maguire*, 22 Wall. 215; *State v. Hannibal &c. R. R. Co.* 60 Mo. 143.

13 *Raleigh &c. R. R. Co. v. Reid*, 13 Wall. 269; 64 N. C. 155.

14 *State v. Commissioners*, 37 N. J. 240.

15 *State v. Bank*, 2 Houst. 99.

16 *McGavisk v. State*, 34 N. J. 509.

17 *Salt Co. v. East Saginaw*, 13 Wall. 373.



**Banking corporations.**—The State charter to a bank constitutes a contract it is not at liberty to break,<sup>1</sup> and a provision in the charter cannot be abrogated by subsequent legislation.<sup>2</sup> So, a provision that its bills shall be receivable for taxes is an obligation which cannot be impaired.<sup>3</sup> So, the repeal of a provision that its notes shall be received for all debts due the State cannot affect notes in circulation at the time.<sup>4</sup> Where a statute provides that such bills are payable in gold or silver coin, a law providing that depreciated bills shall not be received is valid.<sup>5</sup> A general statute making the suspension of specie payment by a bank a cause of forfeiture, when not so stated in the charter, is void.<sup>6</sup> If a State creates a bank of which it is the sole stockholder, it cannot withdraw the fund or any part without impairing the obligation to creditors.<sup>7</sup> So, a statute which withdraws the assets of a bank from the operation of all legal process, is void.<sup>8</sup> A statute appropriating the assets of a bank operates as an assignment, and cannot be repealed by a subsequent act.<sup>9</sup> A law declaring notes of a State bank void is unconstitutional.<sup>10</sup> The general right to prescribe the issue of notes cannot be construed to be relinquished, unless the intention is clearly expressed.<sup>11</sup> A statute prohibiting a bank from transferring notes by indorsement is valid, unless the power to do so is expressly granted in the charter.<sup>12</sup> If notes are made payable at a certain place, a statute requiring it to receive them in payment of notes of other banks is void.<sup>13</sup> A statute which permits bank-notes to be tendered for a debt due the bank, but assigned before its passage, is unconstitutional.<sup>14</sup> A banking corporation, the stock of which is owned by private individuals, is a private corporation,<sup>15</sup> but a State cannot incorporate individuals and authorize them to coin money.<sup>16</sup> A statute may authorize debtors of the bank to pay in the notes and certificates of the bank,<sup>17</sup> or may provide that a bank shall redeem several bills presented together as a single obligation,<sup>18</sup> or may impose a penalty for refusal to pay bank-bills, unless a clause in the charter prohibits such law.<sup>19</sup> The State may assess the stockholders of banks which have gone into liquidation.<sup>20</sup> A State allowing a judge and commissioner to reduce the account in a savings bank, affects the remedy and is valid.<sup>21</sup> Where a bank charter provided for the receipt of bank-notes for taxes, an amendment to the Constitution cannot impair the obligation of the contract.<sup>22</sup>

<sup>1</sup> *Woodruff v. Trapnall*, 10 How. 190; 8 Ark. 236; *Paup v. Drew*, 10 How. 222; 9 Ark. 205.

- 2 *Furman v. Nichol*, 8 Wall. 44; *Barings v. Dabney*, 19 Wall. 1
- 3 *Furman v. Nichol*, 8 Wall. 44.
- 4 *Woodruff v. Trapnall*, 10 How. 190; 8 Ark. 236; *Paup v. Drew*, 10 How. 222; 9 Ark. 205; *Trigg v. Drew*, 10 How. 224.
- 5 *Graniteville Manuf. Co. v. Roper*, 15 Rich. 138.
- 6 *State v. Tombebec Bank*, 2 Stew. 30.
- 7 *Curran v. Arkansas*, 15 How. 304; 12 Ark. 321.
- 8 *State v. Bank*, 1 Rich. N. S. 63.
- 9 *Barings v. Dabney*, 19 Wall. 1
- 10 *Keith v. Clark*, 97 U. S. 451.
- 11 *Ohio T. Co. v. Debolt*, 16 How. 416; 1 Ohio St. 563; *State v. Matthews*, 3 Jones (N. C.) 451.
- 12 *Payne v. Baldwin*, 11 Miss. 661; *McIntyre v. Ingraham*, 35 Miss. 25.
- 13 *Bank v. Bank of Cape Fear*, 13 Ired. 75.
- 14 *Dundas v. Bowler*, 3 McLean, 397.
- 15 *Piqua Bank v. Knoop*, 16 How. 369; *Miners' Bank v. U. S.* 1 Iowa, 553; *Hazen v. Union Bank*, 1 Sneed, 115.
- 16 *Briscoe v. Bank of Kentucky*, 11 Peters, 257; 7 J. J. Marsh. 349.
- 17 *Bank of Md. v. Ruff*, 7 Gill & J. 448; *Exchange Bank v. Tiddy*, 67 N. C. 163; *Bank v. Hart*, 67 N. C. 264; *Bank v. Domigan*, 12 Ohio, 220.
- 18 *Reapers' Bank v. Willard*, 24 Ill. 433.
- 19 *Brown v. Penobscot Bank*, 8 Mass. 445.
- 20 *Commonwealth v. Cochituate Bank*, 3 Allen, 42.
- 21 *Simpson v. Savings Bank*, 53 N. H. 433.
- 22 *Keith v. Clark*, 97 U. S. 451

**Bridges, ferries, and turnpikes.**—A charter includes the laws defining its stipulations at the time of the grant; and a subsequent statute allowing the erection of a bridge within the prohibited distance is void.<sup>1</sup> The construction of a railroad bridge is not a violation of the exclusive right to construct a bridge for carriages in common use.<sup>2</sup> A statute cannot require a canal corporation to keep in repair the bridges connecting the highways intersected by the canal.<sup>3</sup> A statute giving a right of action to those who have been injured by the erection of a close bridge over a navigable creek, when such bridge was authorized by the charter, is void.<sup>4</sup> A grant of a ferry franchise is a contract;<sup>5</sup> but if no consideration has been paid, the grantee takes it subject to the power of the legislature to regulate rates of ferriage.<sup>6</sup> A new road, canal, or bridge, materially diverting travel or business from an old one established under a prior charter, is not unconstitutional, unless the franchise is defined or made exclusive.<sup>7</sup> A franchise granting exclusive privileges is a contract;<sup>8</sup> so as to ferry franchise.<sup>9</sup> If the grant of a ferry franchise is accompanied by a reservation, the legislature may make another grant directly to another.<sup>10</sup> A charter to a

railroad does not impair a prior charter to a turnpike company.<sup>11</sup> There is no implied contract of an exclusive grant to a turnpike corporation, or that they shall be free from the common liability under the power of eminent domain.<sup>12</sup> If the charter prescribes the form of the signs and boards with rates of toll, it will prevail over a general statute subsequently passed.<sup>13</sup> A statute conferring the right to collect additional tolls is a grant.<sup>14</sup> A statute authorizing commissioners to examine turnpike roads, and throw open its gates if not in repair, is void;<sup>15</sup> but a statute appointing commissioners with power to direct proper repairs is valid.<sup>16</sup> The legislature cannot require a turnpike company to set back its gates, located in accordance with the terms of its charter.<sup>17</sup>

1 *Micon v. Tallahassee Br. Co.* 47 Ala. 662.

2 *Bridge Prop. v. Hoboken &c. Co.* 1 Wall. 116; 2 Beas. 81; *McLeod v. Savannah &c. R. R. Co.* 25 Ga. 445; *Mohawk Br. Co. v. Railroad Co.* 4 Paige, 554; *Thompson v. Railroad Co.* 2 Sandf. 625.

3 *City v. Erie Canal Co.* 59 Pa. St. 174. And see *Meadville v. Erie Can. Co.* 18 Pa. St. 66.

4 *Bailey v. Railroad Co.* 4 Harring. 309.

5 *Mills v. St. Clair Co.* 8 How. 581; *McRoberts v. Washbourne*, 10 Minn. 23.

6 *People v. The Mayor*, 21 Barb. 192; *State v. Hudson*, 23 N. J. 206; 21 N. J. 718.

11 *Peters*, 420; 24 Mass. 462; *Hamilton Av.* 14 Barb. 405; *Wall v. Suter*, 21 Cal. 237; *Ind.* 519; *Salem T. Co. v. Lynn*, 18 39; *Harrison v. Young*, 9 Ga. and *Co. v. Atlantic Co.* 4 Ga. Ill. 314; *Curtis v. Morehouse*, Id. 21; *Collins v. Sherman*, 31 Paige, 554; *Fort Plain Br. Co.* 20. 3 Sand. Ch. 625.

8 *Bridge Proprs. v. Hoboken Co.* 1 Wall. 116; *McRae v. Wilmington &c. Co.* 2 Jones (N. C.) 166; *Enfield T. B. v. Hartford &c. Co.* 17 Conn. 49; *Commonwealth v. New Bedf. Br.* 68 Mass. 333; *Mohawk Br. Co. v. Utica &c. Co.* 6 Paige, 554; *Thompson v. N. Y. &c. Co.* 2 Sandf. 625.

9 *Conway v. Taylor*, 1 Black. 603; *Hartford B. Co. v. Union F. Co.* 23 Conn. 210; *Trust. of Newport v. Taylor*, 6 J. J. Marsh. 134; *Comm. v. Bacon*, 13 Bush, 212. And see *Morey v. Prop. of Oxford Br. Smith* (N. H.) 91.

10 *Dyer v. Tuscaloosa Br. Co.* 2 Port. 296.

11 *Turnpike Co. v. Railroad Co.* 19 Gill. & J. 362.

12 *White Riv. T. Co. v. Vermont C. P. & R. Co.* 21 Vt. 590.

13 *Nichols v. Bertram*, 20 Mass. 342.

14 *Darby T. Co. v. Parks*, 19 Conn. 523.

15 *Powell v. Sammons*, 31 Ala. 552.

16 *State v. Bosworth*, 13 Vt. 492.

17 *White's Creek T. Co. v. Davidson Co.* 3 Tenn. Ch. 306.

**Railroads.**—The charter to a railroad is a contract.<sup>1</sup> If it provides that no other railroad shall be built within a certain distance, the corporation cannot be disturbed in the enjoyment of their franchise.<sup>2</sup> Any act which essentially paralyzes the franchise is void.<sup>3</sup> On the consolidation of two or more corporations, the franchise granted to the consolidated corporation is subject to the laws in force at the time of the consolidation.<sup>4</sup> The consolidation works their individual dissolution.<sup>5</sup> Railroads, being highways, are not for all purposes private property—possessing a public character, they are subject to public supervision.<sup>6</sup> A State has the right to regulate the rates to be charged by a railroad for the transportation of freight, or passengers,<sup>7</sup> and this power is not affected by a lease of the road and a pledge of its income.<sup>8</sup> A law changing the tariff of freights allowed by the charter is void.<sup>9</sup> The State may impose a penalty for taking unlawful toll or freight;<sup>10</sup> or may prevent an unjust discrimination in freights.<sup>11</sup> Where a charter provides for the regulation of the business, a subsequent statute interfering with it is void.<sup>12</sup> A statute may authorize the appointment of commissioners to determine the duties and obligations of railroad companies,<sup>13</sup> or may prohibit a railroad from constructing a track where it will endanger safe and convenient access to a depot,<sup>14</sup> but it cannot change the gauge of a railroad.<sup>15</sup> A statute may render a railroad liable for injuries caused by sparks from its engine,<sup>16</sup> or for the neglect and misconduct of its employees,<sup>17</sup> or may require railroads to build a depot at a certain place and stop thereat.<sup>18</sup> If a commissioner merely has the power to approve or disapprove of the abandonment of a station, his consent is not a contract binding on the State.<sup>19</sup> A statute may regulate railroad crossings,<sup>20</sup> or may require them to ring a bell or sound a whistle at a crossing,<sup>21</sup> or may regulate their speed in a city,<sup>22</sup> or may require them to erect fences and cattle-guards,<sup>23</sup> or may prohibit from carrying freight which is regarded as detrimental to public health, morals, or safety, and may make them liable as insurers of life and limb of passengers;<sup>24</sup> but a statute requiring a railroad to keep flagmen where there is no unusual danger is void.<sup>25</sup> An act imposing restrictions on conveyance of land to railroads impairs the obligation of the contract.<sup>26</sup>

1 *Wilmington R. R. v. Reid*, 13 Wall. 264; *Koenig v. O. & N. W. R. R. Co.* 3 Neb. 383.

2 *Boston &c. R. R. Co. v. Salem &c. R. R. Co.* 68 Mass. 1.

3 *Sloan v. Mo. Pac. R. R. Co.* 2 Cent. L. J. 781; *Philadelphia &c. R. R. Co. v. Bowers*, 4 Houst. 506; *T. W. &c. R. R. Co. v. City*, 67 Ill. 37.

4 Railroad Co. *v.* Maine, 96 U. S. 510; Atlantic &c. R. R. Co. *v.* Georgia, 11 Chic. L. N. 215; State *v.* Northern Cent. R. R. Co. 44 Md. 131.

5 Shields *v.* Ohio, 95 U. S. 319.

6 Pittsburg &c. R. R. Co. *v.* S. W. Pa. R. R. Co. 77 Pa. St. 173.

7 Chicago &c. R. R. Co. *v.* Iowa, 94 U. S. 155; Winona &c. R. R. Co. *v.* Blake, 94 U. S. 180; 19 Minn. 418; Parke *v.* Metrop. R. R. Co. 109 Mass. 506. See Supplement, *post*, 308.

8 Chicago &c. R. R. Co. *v.* Iowa, 94 U. S. 155.

9 Sloan *v.* Missouri P. R. R. Co. 2 Cent. L. J. 781; Philadelphia &c. R. R. Co. *v.* Bowers, 4 Houst. 506; Hamilton *v.* Keith, 5 Bush, 458; Attorney-General *v.* Railroad Co. 35 Wis. 425. But see Moore *v.* Illinois Cent. R. R. Co. 4 Chic. L. N. 123.

10 Camden & A. R. R. Co. *v.* Briggs, 22 N. J. 623; Norris *v.* Androscoggin R. R. Co. 39 Me. 273.

11 Chicago &c. R. R. Co. *v.* People, 67 Ill. 11; Vincent *v.* Chicago &c. R. R. Co. 49 Ill. 33; People *v.* Chicago &c. R. R. Co. 55 Ill. 111; Chicago &c. R. R. Co. *v.* People, 56 Ill. 365.

12 State *v.* Noyes, 47 Me. 189.

13 Portland R. R. Co. *v.* Railway Co. 46 Me. 69.

14 P. &c. R. R. Co. *v.* B. &c. R. R. Co. 65 Me. 122.

15 State *v.* Richmond &c. R. R. Co. 73 N. C. 527.

16 Lyman *v.* B. &c. R. R. Co. 53 Mass. 288; Rodemacher *v.* M. &c. R. R. Co. 41 Iowa, 297.

17 B. &c. R. R. Co. *v.* State, 32 N. H. 215.

18 Railroad Commissioners *v.* P. &c. R. R. Co. 63 Me. 269.

19 State *v.* N. H. &c. R. R. Co. 43 Conn. 351.

20 P. &c. R. R. Co. *v.* S. W. P. R. R. Co. 77 Pa. St. 173.

21 Galena R. R. Co. *v.* Appleby, 28 Ill. 283; Galena R. R. Co. *v.* Loomis, 13 Ill. 548.

22 Chicago &c. R. R. Co. *v.* Haggerty, 67 Ill. 113.

23 Suydam *v.* Moore, 8 Barb. 358; Waldron *v.* Railroad Co. 8 Barb. 390; New Albany &c. R. R. Co. *v.* Tilton, 12 Ind. 3; Madison &c. R. R. Co. *v.* Whiteneck, 8 Ind. 217; Ohio &c. R. R. *v.* McClelland, 25 Ill. 140; Kansas P. R. R. Co. *v.* Mower, 16 Kans. 573; Jones *v.* G. &c. R. R. Co. 16 Iowa, 6; Indianapolis R. R. Co. *v.* Kercheval, 16 Ind. 84; Nichols *v.* S. &c. R. R. Co. 43 Me. 356; Wenona &c. R. R. Co. *v.* Waldron, 11 Minn. 515; Gorman *v.* Pacific R. R. Co. 26 Mo. 441; Blair *v.* M. &c. R. R. Co. 20 Wis. 254; Pennsylvania R. R. Co. *v.* Riblet, 66 Pa. 164.

24 Thorpe *v.* Burlington &c. R. R. Co. 27 Vt. 140; Nelson *v.* Vermont &c. R. R. Co. 26 Vt. 717.

25 T. &c. R. R. Co. *v.* City, 67 Ill. 37.

26 De Graff *v.* St. Paul &c. R. R. Co. 23 Minn. 144.

**Immunity from taxation.**—The immunity from taxation in the original charter accompanies the lands transferred by the State to a new corporation;<sup>1</sup> so, a grant of all rights and privileges conferred by the charter of another corporation includes an exemption from taxation.<sup>2</sup> The legislature cannot repeal an act exempting a railroad from taxation.<sup>3</sup> The exemption of a railroad from taxation does not exempt the lessee of the road from taxation on profits and earnings.<sup>4</sup> If the stock is exempt no tax can be levied on a branch road authorized by amendment of the charter;<sup>5</sup> but on consolidation of two corporations the exemption of one will not extend to the property of the other.<sup>6</sup> A contract not to tax a railroad or its property is broken by a levy of a tax on its gross receipts for transportation of freight and passengers.<sup>7</sup> A statute releasing a railroad corporation from a tax lawfully imposed by a municipal corporation impairs the obligation of the contract.<sup>8</sup> Where the capital stock was forever exempt and the road and other property exempt for a limited time, the capital stock is taxable after that time.<sup>9</sup>

1 *Tomlinson v. Branch*, 15 Wall. 460; *Thomas v. Scotland Co.* 3 Dill. 12; *Harshman v. Bates Co.* 3 Dill. 150; *County Commrs. v. Franklin R. R. Co.* 34 Md. 159; *First Div. R. R. v. Parcher*, 14 Minn. 297; *Wilmington &c. R. R. Co. v. Reid*, 13 Wall. 264.

2 *Humphreys v. Pegues*, 16 Wall. 244. *Contra*, *Wilson v. Gaines*, 3 Tenn. Ch. 597.

3 *Humphreys v. Pegues*, 16 Wall. 244.

4 *State v. Delaware &c. R. R. Co.* 30 N. J. 473; 31 N. J. 531.

5 *Atlantic &c. R. R. Co. v. Allen*, 15 Fla. 637.

6 *Philadelphia &c. R. R. Co. v. State*, 10 How. 376; *Tomlinson v. Branch*, 15 Wall. 460; *Delaware R. R. Tax*, 18 Wall. 206; *Evansville &c. R. R. Co. v. Commonwealth*, 9 Bush, 438.

7 *Pacific R. R. Co. v. Maguire*, 20 Wall. 36; 51 Mo. 142.

8 *City v. Illinois Cent. R. R. Co.* 39 Iowa, 36.

9 *Memphis &c. R. R. Co. v. Gaines*, 3 Tenn. Ch. 604.

**State authority over corporations.**—The legislature has the same right of general control over corporations that it has over natural persons,<sup>1</sup> and any privileges which may exempt a corporation from burdens common to individuals do not flow necessarily from the charter, but must be expressed in it, or they do not exist;<sup>2</sup> so, the relinquishment of sovereign powers must be plain and unequivocal; it is never to be assumed.<sup>3</sup> The State grant of a charter is a contract; but all contracts are made subject to the right of eminent domain,<sup>4</sup> and the exercise of the right of eminent domain is not a revocation of the grant;<sup>5</sup> so, an act providing for the condemnation of property for street

purposes is not in conflict.<sup>6</sup> There is nothing in the charter of a corporation which prevents the taking of its property for public use,<sup>7</sup> provided compensation be made.<sup>8</sup> A statute setting aside an inquisition for damages, and substituting an inquisition *de novo*, does not impair the obligation of the charter.<sup>9</sup> A State legislature cannot abandon the police power, or give a vested right to its exercise by either a corporation or an individual.<sup>10</sup> A corporation has no greater rights to manufacture or sell malt liquor than an individual,<sup>11</sup> and if a corporation claims exemption from such powers, it must show a relinquishment in the charter, or that its exercise is incompatible with or destructive of particular rights in the charter.<sup>12</sup> The legislature is the exclusive judge of the propriety of interference in the use of private property within the scope of legislative power.<sup>13</sup> Every legislative grant is made with the implied reservation that it shall not injure others.<sup>14</sup>

1 *Benson v. N. Y.* 10 Barb, 223; *Galena &c. R. R. Co. v. Loomis*, 13 Ill. 543; *Ohio &c. R. R. Co. v. McClelland*, 25 Ill. 140; *N. W. Fert. Co. v. Hyde Park*, 70 Ill. 634; *New Albany &c. R. R. Co. v. Tilton*, 12 Ind. 3; *Gorman v. Pacific R. R.* 26 Mo. 441; *Burlington &c. R. R. v. State*, 32 N. H. 215; *State v. Matthews*, 3 Jones & C. 451; *Nelson v. Vermont &c. R. R.* 26 Vt. 717; *Thorpe v. B. &c. R. R.* 27 Vt. 140.

2 *Bank v. Hamilton*, 21 Ill. 53; *Peters v. Railroad Co.* 23 Mo. 107; *Thorpe v. Burlington &c. R. R. Co.* 27 Vt. 140.

3 *Providence Bank v. Billings*, 4 Peters, 514; *Phila. &c. R. R. Co. v. State*, 10 How. 376; *Delaware R. R. Tax*, 18 Wall. 206; *State v. Matthews*, 3 Jones (N. C.) 451; *Gordon v. Baltimore*, 5 Gill. 231; *Judson v. State, Minor*, 150; *City v. Boatmen's &c. Co.* 47 Mo. 150; *State v. Dulle*, 48 Mo. 282; *Brewster v. Hough*, 10 N. H. 139; *State v. Minton*, 23 N. J. 529; *Bank of Pa. v. Commonwealth*, 19 Pa. St. 144; *Gilman v. Sheboygan City*, 2 Black, 517.

4 *West Riv. Br. Co. v. Dix*, 6 How. 543; 16 Vt. 446; *Richmond R. R. Co. v. Louisa R. R. Co.* 13 How. 71; *Rundle v. Del. &c. Co.* 14 How. 80; *Enfield Br. Co. v. Railroad Co.* 17 Conn. 454; *Shorter v. Smith*, 9 Ga. 517; *James Riv. Co. v. Thompson*, 3 Gratt. 270; *Newcastle &c. R. R. Co. v. Peru &c. R. R. Co.* 3 Ind. 464; *Boston Wat. Riv. Co. v. Railroad*, 40 Mass. 360; *Boston &c. R. R. Co. v. Salem &c. R. R. Co.* 68 Mass. 1; *Central Br. v. Lowell*, 70 Mass. 474; *Piscataqua Br. v. N. H. Bridge Co.* 7 N. H. 35; *Barber v. Andover*, 8 N. H. 398; *Northern R. R. v. Concord R. R.* 27 N. H. 183; *Crosby v. Hanover*, 36 N. H. 404; *Red River Br. Co. v. Clarksville*, 1 Sneed, 176; *State v. De Lesdernier*, 7 Tex. 99; *Armington v. Barnet*, 15 Vt. 745.

5 *Illinois & Mich. C. Co. v. Railroad Co.* 14 Ill. 314.

6 *Garrison v. N. Y. City*, 21 Wall. 196.

7 *Alabama &c. R. R. Co. v. Kenney*, 39 Ala. 307; *In re Kerr*, 42 Barb. 119; *Beltona Comp. Case*, 3 Bland, 442; *Turnpike Co. v. Railroad Co.* 10 Gill & J. 392; *Tuckahoe C. Co. v. Railroad*, 11 Leigh, 42; *Boston W. P. Co. v. Railroad*, 40 Mass. 360; *Backus v. Lebanon*, 11 N. H. 19; *Crosby v. Hanover*, 36 N. H. 404; *White River T. Co. v. Railroad Co.* 21 Vt. 590.

8 *Barber v. Andover*, 8 N. H. 398; *Pierce v. Somersworth*, 10 N. H. 369; *Armington v. Barnet*, 15 Vt. 745.

9 *Balt. R. R. Co. v. Nesbit*, 10 How. 395.

10 *Dingman v. People*, 51 Ill. 277; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Fertilizing Co. v. Hyde Park*, 97 U. S. 659.

11 *Beer Co. v. Massachusetts*, 97 U. S. 25.

12 *State v. South Pacific R. R.* 24 Tex. 80.

13 *Munn v. Illinois*, 94 U. S. 113; 69 Ill. 80.

14 *Pittsburg &c. R. R. Co. v. S. W. Pa. R. R. Co.* 77 Pa. St. 173.

**Amendment or alteration of charter.**—A charter may be altered or amended with the consent of the corporation,<sup>1</sup> but there must be an acceptance of the subsequent act.<sup>2</sup> If an amendment is accepted by a corporate vote as an amendment to the original charter, it is not a violation of the charter.<sup>3</sup> The assent relates back to the date of the law.<sup>4</sup> An inference of assent cannot be drawn from non-user or misuser of its franchise,<sup>5</sup> but for a willful misuser or non-user a corporation is subject to dissolution.<sup>6</sup> Where the amendment is as to several particulars, the acceptance must be made as it is offered, or not at all.<sup>7</sup> The charter of a corporation may be repealed by an amendment accepted by the corporation,<sup>8</sup> but an amendment is not binding without acceptance,<sup>9</sup> unless the power be reserved in the charter.<sup>10</sup> If the grant is accepted on the terms prescribed, it becomes a compact, binding on the parties.<sup>11</sup> A statute cannot amend a charter so as to restrict the use of its property.<sup>12</sup> Nor to give to public use for a use entirely different and inconsistent with the original use.<sup>13</sup> So, an officer of a corporation cannot be deprived of his office by an amendment of the charter.<sup>14</sup> A public statute which provides how charters may be amended is not a contract.<sup>15</sup> A power to alter is not ordinarily a power to repeal or a power to destroy.<sup>16</sup> A State may modify or repeal a charter before it is accepted, and before rights have been acquired under it.<sup>17</sup>

1 *People v. Marshall*, 1 Gilm. 672; *Comm. v. Jarvis*, 1 Mon. 5; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379; 6 Watts & S. 101; *Ehrenzeller v. Canal Co.* 1 Rawle, 181; *Trustees v. Winston*, 5 Stew. & P. 17.

2 *Pingry v. Washburn*, 1 Aik. 264; *Commonwealth v. Cullen*, 13 Pa. St. 133; *Allen v. McKan*, 1 Sum. 276. Otherwise as to the assent of curators and directors of an eleemosynary corporation—*State v. Adams*, 44 Mo. 570.

3 *Dartmouth Coll. v. Woodward*, 4 Wheat. 518; *Mumma v. Potomac Co.* 8 Peters, 281; *Penn. Coll. Cases*, 13 Wall. 214; *Sie. v. Bloom*, 19 Johns. 456; *Joy v. Jackson Co.* 11 Mich. 153; *Riddle v. Locks and Canals*, 7 Mass. 169; *McLaren v. Pennington*, 1 Paige, 107; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379; *Commonwealth v. Cullen*, 13 Pa. St. 133.

4 *Ehrenzeller v. Canal Co.* 1 Rawle, 181.

5 *Regents v. Williams*, 9 Gill & J. 365.

6 *Mumma v. Potomac Co.* 8 Peters, 281.



- 7 *Marietta &c. R. R. Co. v. Elliott*, 10 Ohio St. 57.
- 8 *Mobile R. R. Co. v. State*, 29 Ala. 573; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379; 6 Watts & S. 101.
- 9 *Sage v. Dillard*, 15 B. Mon. 340; *Yeaton v. Bank*, 21 Gratt. 593; *Troy v. Rutland &c. R. R. Co.* 17 Barb. 591; *White v. Railroad Co.* 14 Barb. 559; *Pennsylvania Coll. Cas.* 13 Wall. 213; *Tomlinson v. Jessup*, 15 Wall. 459; *Miller v. State*, 15 Wall. 478; *Holyoke v. Lyman*, 15 Wall. 500; *Mayor &c. v. Norwich &c. R. R. Co.* 109 Mass. 103; *Thornton v. Marginal F. R. Co.* 123 Mass. 32.
- 10 *Wash. Br. Co. v. State*, 18 Conn. 64; *Enfield T. B. Co. v. H. &c. Co.* 17 Conn. 59; *Bronson v. Taylor*, 33 Conn. 116; *M. & E. R. R. Co. v. Commrs. of R. R. Tax*, 37 N. J. 228.
- 11 *Crease v. Babcock*, 40 Mass. 334; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.
- 12 *Comm. v. Bacon*, 13 Bush, 210.
- 13 *Jacksonville v. Jacksonville Co.* 67 Ill. 540.
- 14 *Allen v. McKean*, 1 Sum. 276.
- 15 *State v. New Haven &c. R. R. Co.* 43 Conn. 351.
- 16 *Hartford Br. Co. v. East Hartford*, 16 Conn. 149.
- 17 *Canal Co. v. R. R. Co.* 4 Gill & J. 5.

**Reserved power to alter or amend.**—When this power is reserved in the State constitution, or in general laws on the subject, or in the special act of incorporation, its exercise does not impair the contract of which it forms a part.<sup>1</sup> If not reserved in the constitution, it is a question whether the legislature intended it to inhere in the charter.<sup>2</sup> That the charter shall not be altered except by an act of the legislature is a sufficient reservation of the power to alter.<sup>3</sup> If the power is reserved in a charter, the legislature may repeal, alter, or modify it,<sup>4</sup> and a creditor of the corporation cannot object to the repeal.<sup>5</sup> The legislature may modify the charter by a general statute,<sup>6</sup> and the alteration is binding whether the corporation assents or not,<sup>7</sup> or the alteration may be made by a change in the State constitution.<sup>8</sup> The power to alter or modify is not exhausted by one alteration.<sup>9</sup> Under this reserved power a legislature cannot change the fundamental character of the corporation,<sup>10</sup> nor take away nor intermeddle with property rights,<sup>11</sup> nor authorize the legislature to take the corporation property for public use without compensation;<sup>12</sup> and where there is a provision that the alteration shall work no injustice, it is for the courts to decide whether injustice is done.<sup>13</sup> This power becomes, by operation of law, a part of every contract or mortgage made by the corporation;<sup>14</sup> but the legislature cannot alter contracts made under the charter.<sup>15</sup> If the general

statute contains this reservation, a charter subsequently granted is subject to this power.<sup>16</sup> Where the power to alter is reserved, the State may from time to time designate the agents or organs, and prescribe the manner in which the power shall be exercised.<sup>17</sup> Where the power is reserved in the Constitution, the right is not affected by the grant of authority by the legislature to consolidate with a foreign corporation.<sup>18</sup>

1 Penn. Coll. Cases, 13 Wall. 214; *Miller v. State*, 15 Wall. 478; *Holyoke v. Lyman*, 15 Wall. 522; *Commonwealth v. Fayette Co. R. R. Co.* 35 Pa. 452; *English v. N. H. & N. Co.* 32 Conn. 243.

2 *State v. Yard*, 10 Chic. L. N. 90.

3 Penn. Coll. Cases, 13 Wall. 214; *Houston v. Jeff. Coll.* 63 Pa. St. 428; *Comm. v. Bousall*, 3 Whart. 559.

4 *Allen v. McKean*, 1 Sum. 276; *Crease v. Babcock*, 40 Mass. 334; *Perlin v. Oliver*, 1 Minn. 202; *Del. R. R. Co. v. Thorp*, 5 Harring. 454; *McLaren v. Pennington*, 1 Paige, 102; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379; 6 W. & S. 101; *Ferguson v. Miners' & M. Bank*, 3 Sneed, 609; *Stephen v. Smith*, 29 Vt. 160; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Butler v. Walker*, 80 Ill 345. See Supplement, *post*, 308.

5 *West Wis. R. R. Co. v. Supervisors*, 93 U. S. 595; 35 Wis. 257; *Read v. Frankfort Bank*, 23 Me. 318.

6 *State v. Commrs.* 38 N. J. 472; *Bangor R. R. Co. v. Smith*, 47 Me. 34.

7 *Hyatt v. Whipple*, 37 Barb. 595; *Hyatt v. Esmond*, 37 Barb. 601, *Mayor v. N. & C. R. R. Co.* 109 Mass. 103; *Attorney-General v. R. R. Co.* 35 Wis. 425.

8 *In re Lee's Bank*, 21 N. Y. 9.

9 *People v. Hills*, 46 Barb. 340; *Proprietors v. Haskell*, 7 Me. 474; *State v. Comm.* 37 N. J. 228; *M. & E. R. R. Co. v. Commrs. of R. R. Tax*, 37 N. J. 228.

10 *Buffalo & C. R. R. Co. v. Dudley*, 14 N. Y. 336; *Troy & C. R. R. Co. v. Kerr*, 17 Barb. 581; *White v. R. R. Co.* 14 Barb. 559.

11 *Allen v. McKean*, 1 Sum. 276; *Comm. v. Essex Co.* 79 Mass. 239.

12 *Miller v. R. R. Co.* 21 Barb. 513

13 *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

14 *Anonymous*, 6 Chic. L. N. 333.

15 *Bank v. McVeigh*, 20 Gratt. 457; Penn. Coll. Cases, 13 Wall. 214; *Plek v. C. & C. R. R. Co.* 94 U. S. 164; 6 Biss. 177; *Terrett v. Taylor*; 9 Cranch, 43; Penn. Coll. Cases, 13 Wall. 190.

16 *Sherman v. Smith*, 1 Black. 587; *Miller v. State*, 15 Wall. 478; *Suydam v. Moore*, 8 Barb. 358; *White v. R. R. Co.* 14 Barb. 559; *Griffin v. Ky. Ins. Co.* 3 Bush, 552; *Hyatt v. McMahon*, 25 Barb. 457; *State v. Person*, 32 N. J. 134; *Cent. R. R. Co. v. State*, 54 Ga. 501; *State v. Commissioners*, 37 N. J. 228; *Fort Plain Br. v. Smith*, 30 N. Y. 44; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

17 *In re Reciprocity Bank*, 22 N. Y. 9; 17 How. Pr. 323; 29 Barb. 368.

18 *Anonymous*, 6 Chic. L. N. 333.

**Exercise of reserved power.**—The reserved power may be exercised to any extent to carry into effect the original purposes of the grant,<sup>1</sup> but it should not extend beyond the terms in which it is expressed.<sup>2</sup> When this power is reserved, the corporation may be required to pay the excess of the dividend instead of one-third of the net profits,<sup>3</sup> or the stockholders may be made liable for all debts until the whole capital stock is paid in.<sup>4</sup> Where the power to alter is reserved in the charter, a State may prohibit an insolvent corporation from giving a preference,<sup>5</sup> or it may make the stockholders personally liable for the debts of the corporation subsequently contracted.<sup>6</sup> If the interests of the creditors demand it, the legislature may take away the custody of the assets from the trustees, and place them in the custody of a State officer,<sup>7</sup> or may authorize a receiver to make assessments on premium notes instead of the directors,<sup>8</sup> but it cannot appoint additional trustees.<sup>9</sup> It may repeal a clause in the charter exempting from taxation;<sup>10</sup> or may impose a tax different from that stipulated for in the charter;<sup>11</sup> or may modify a provision requiring consent of a majority to levy a pew tax;<sup>12</sup> or may diminish the right to a ferry franchise.<sup>13</sup> Where this power is reserved, a corporation authorized to construct a dam may be required to construct a suitable fishway;<sup>14</sup> or may impose a burden connected with the grant;<sup>15</sup> or may require a railroad to erect a station-house;<sup>16</sup> or may require several railroads to unite in a station in a city;<sup>17</sup> or may authorize another company to lay a similar track, or to use the track of the first company on making compensation for wear and tear;<sup>18</sup> or may require the raising or lowering of highways across its tracks;<sup>19</sup> or direct excavations and embankments to be made;<sup>20</sup> or compel the widening of a bridge over an excavation;<sup>21</sup> or require a railroad to fence its roads;<sup>22</sup> or to construct cattle-guards.<sup>23</sup>

1 *Fletcher v. Peck*, 6 Cranch, 87; *Miller v. State*, 15 Wall. 478; *Holyoke v. Lyman*, 15 Wall. 500.

2 *State v. Yard*, 10 Ch. L. N. 90.

3 *Massachusetts Gen. Hosp. v. State M. L. Ins. Co.* 70 Mass. 227.

4 *Batler v. Walker*, 8 Ch. L. N. 92.

5 *Robinson v. Gardiner*, 18 Gratt. 509.

6 *Sherman v. Smith*, 1 Black, 587; *In re Reciprocity Bank*, 20 Barb. 369; 17 How. Pr. 323; 22 N. Y. 9; *In re Lee's Bank*, 21 N. Y. 9; *Bailey v. Hollister*, 26 N. Y. 112; *In re Empire City Bank*, 18 N. Y. 190.

7 *Lothrop v. Stedman*, 42 Conn. 563.

8 *Hyatt v. McMahon*, 26 Barb. 457.

9 *Sage v. Dillard*, 15 B. Mon. 340.

10 *Tomlinson v. Jessup*, 15 Wall. 454; *West. Wis. R. R. Co. v. Supervisors*, 93 U. S. 595; 35 Wis. 257; *Hewitt v. N. Y. &c. R. R. Co.* 12 Blatchf. 452; *C. R. & B. Co. v. State*, 54 Ga. 401; *A. & G. R. R. Co. v. State*, 55 Ga. 312; *City v. Metrop. Bank*, 27 La. An. 643; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340; *State v. Miller*, 31 Ibid. 521; *State v. Mayor*, 31 N. J. 575; *Commonwealth v. Fayette Co. R. R. Co.* 55 Pa. St. 452; *Union Improve. Co. v. Commonwealth*, 69 Pa. St. 140.

11 *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

12 *Bailey v. Trustees*, 6 R. I. 491.

13 *Perrin v. Oliver*, 1 Minn. 202.

14 *Holyoke v. Lyman*, 15 Wall. 500; *Commrs. v. Holyoke W. P. Co.* 104 Mass. 443. But see *Comm. v. Essex Co.* 70 Mass. 239.

15 *English v. New Haven Co.* 32 Conn. 240.

16 *Comm. v. Eastern R. R. Co.* 103 Mass. 254.

17 *Mayor v. N. & W. R. R. Co.* 109 Mass. 103.

18 *Metrop. R. R. Co. v. Highland Railway*, 118 Mass. 290.

19 *City of Roxbury v. Railroad Co.* 6 Cush. 424.

20 *Fitchburg R. R. Co. v. Grand Junction R. R. Co.* 86 Mass. 198; *Albany R. R. Co. v. Brownell*, 24 N. Y. 345.

21 *English v. New Haven Co.* 32 Conn. 240.

22 *Staats v. Hudson Riv. R. R. Co.* 3 Keyes, 196.

23 *Bulkley v. N. Y. &c. R. R. Co.* 27 Conn. 479.

**Power to repeal.**—The reservation of the power of revocation is valid.<sup>1</sup> The power to repeal does not confer the power to destroy the executory contracts of the corporation.<sup>2</sup> If the power to repeal depends on the abuse or misuse of the privileges, it is not necessary that such abuse or misuse should be judicially ascertained.<sup>3</sup> An act of incorporation may be repealed by implication.<sup>4</sup> If the power to repeal is reserved by one constitution, it cannot be affected by the subsequent adoption of another.<sup>5</sup> Under the reserved power to repeal, the State may regulate tolls or rates of transportation of persons or property.<sup>6</sup> A State may repeal or alter a charter of a corporation where it is the sole contributor to the fund which supports it.<sup>7</sup>

1 *McLaren v. Pennington*, 1 Paige, 102; *Crease v. Babcock*, 40 Mass. 334.

2 *Curran v. State*, 15 How. 304; 12 Ark. 321.

3 *Crease v. Babcock*, 40 Mass. 334; *Miners' Bank v. U. S.* 1 Iowa. 553; *Eric &c. R. R. Co. v. Casey*, 26 Pa. St. 287. But see *Mayor v. Pittsburgh &c. R. R. Co.* 1 Abb. U. S. 9; *Flint &c. v. Woodhull*, 25 Mich. 99.

4 *Union R. R. Co. v. East Tenn. R. R. Co.* 14 Ga. 327.

5 *State v. Northern Centr. R. R. Co.* 44 Md. 131.

6 *Peik v. Chicago &c. R. R. Co.* 94 U. S. 164; 6 Bliss. 177; *Parker v. Metropolitan R. R. Co.* 100 Mass. 506; *Plank Road Co. v. Reynolds*, 3 Wis. 287; *Attorney-General v. R. R. Co.* 35 Wis. 435; *Hinckley v. Chicago &c. R. R.* 33 Wis. 194; *State v. Stone*, 37 Wis. 204; *Shields v. State*, 26 Ohio. St. 86; *Anonymous*, 6 Ch. L. N. 333.

7 *Curran v. Arkansas*, 15 How. 304; 12 Ark. 321; *Dart v. Houston*, 22 Ga. 506; *Trustees v. Winston*, 5 Stew. & P. 17; *Bass v. Fontleroy*, 11 Texas, 698; *Mobile School Com. v. Putnam*, 44 Ala. 406.

**Municipal corporations.**—The charter of a public corporation created for the purposes of government cannot be considered a contract,<sup>1</sup> as the grant of the franchise may at any time be resumed.<sup>2</sup> A power to alter and change public corporations and to adapt them to the purposes intended is implied.<sup>3</sup> Transactions between the legislature and municipal corporations are in the nature of legislation rather than of compact.<sup>4</sup> A statute may take part of the territory of one municipal corporation and give it to another,<sup>5</sup> or extend the limits of a corporation without consent of the citizens of the annexed land.<sup>6</sup> But a law which repeals an act passed on the division of a township, requiring each town to bear its proportionate expenses of paupers, is unconstitutional.<sup>7</sup> The power to divide the property is incident to the power to divide the territory.<sup>8</sup> The legislature may unite and divide townships and their school funds,<sup>9</sup> but it cannot divert the fund from a land grant to a township, though it may abolish the township.<sup>10</sup> A statute giving a municipal corporation the right to purchase property of a private corporation may be repealed or modified at pleasure;<sup>11</sup> so, if the legislature gives the revenues accruing from a private corporation, it may alter or repeal the law, and appropriate such revenues to other purposes;<sup>12</sup> but if the legislature grant bonds to a municipal corporation, a subsequent statute vesting rights to the bonds in others is void;<sup>13</sup> so, the legislature cannot divest a municipal corporation of its private property without consent of its inhabitants.<sup>14</sup> If a municipal corporation is made trustee of an estate, its rights and title are subject to be defeated by the abolishment of its existence.<sup>15</sup>

1 *Bradford v. Cary*, 5 Me. 339; *Marietta v. Fearing*, 4 Ohio, 427; *Governor v. Gridley*, Walk. 323; *People v. Morris*, 13 Wend. 325; *Dartmouth Coll. v. Woodward*, 4 Wheat. 694; *East Hartford v. Hartford Br.* 10 How. 511; *People v. Pinkney*, 32 N. Y. 377.

2 *Trustees v. Tatman*, 13 Ill. 27.

3 *State v. Railroad*, 3 How. 534; 12 Gill & J. 399; *Aspinwall v. Commissioners*, 24 How. 364; *Bridport v. Hubbell*, 5 Conn. 237; *Bush v. Shipman*, 5 Ill. 186; *Mills v. Williams*, 11 Ired. 558; *Gatzweiler v. People*, 14 Ill. 142; *North Yarmouth v. Skillings*, 45 Me. 133; *Mayor v. State*, 15 Md. 376; *Trustees v. Aberdeen*, 21 Miss. 645; *Bristol v. New Chester*, 3 N. H. 524; *Paterson v. Society*, 24 N. J. 385; *City v. Russell*, 9 Mo. 507; *People v. Morris*, 13 Wend. 325.

4 *Hartford v. Hartford Br. Co.* 10 How. 511; 16 Conn. 149; *Trustees v. Tatman*, 13 Ill. 27; *Reynolds v. Baldwin*, 1 La. An. 162; *Police Jury v. Shreveport*, 5 La. An. 661; *Layton v. N. O.* 12 La. An. 515.

5 *Wado v. Richmond*, 18 Gratt. 533.

- 6 *Morford v. Unger*, 8 Iowa, 82; *Manly v. Raleigh*, 4 Jones Eq. 370.
- 7 *Bowdoinham v. Richmond*, 6 Me. 112.
- 8 *Richmond v. Lawrence*, 12 Ill. 1; *North Yarmouth v. Skillings*, 45 Me. 133; *Bristol v. New Chester*, 3 N. H. 524.
- 9 *Greenleaf v. Township*, 22 Ill. 236.
- 10 *State v. Springfield*, 6 Ind. 83; *Morton v. Granada Acad.* 16 Miss. 773.
- 11 *Crescent City G. Co. v. New Orleans G. Co.* 27 La. An. 138.
- 12 *Police Jury v. Shreveport*, 5 La. An. 661; *Marks v. Donaldson*, 24 La. An. 242.
- 13 *Spaulding v. Andover*, 54 N. H. 38.
- 14 *Grogan v. San Francisco*, 18 Cal. 590; *Milwaukee v. Milwaukee*, 12 Wis. 93.
- 15 *Bass v. Fontleroy*, 11 Tex. 698; *Montpeller v. East Montpeller*, 29 Vt. 12.

**Subscription to corporation stock.**—In the absence of a constitutional prohibition, the legislature may authorize municipal corporations to subscribe to railroad,<sup>1</sup> and an act authorizing subscription to corporation stock and a submission of the question to the people is constitutional;<sup>2</sup> but the legislature cannot render a void election and subscription to railroad stock valid.<sup>3</sup> Under the new constitution, municipal corporations are inhibited from subscribing to railroad stock;<sup>4</sup> but the inhibition is prospective only, and does not repeal statutes in force at the time of its adoption.<sup>5</sup> So, where the vote on a subscription to corporate stock was had, and the subscription made prior to the adoption of the new constitution, the old constitution must govern.<sup>6</sup> Art. 12, Sec. 2, of the constitution of Nebraska is a restriction on legislative discretion, and fixes the boundary beyond which the legislature cannot go, but within which it is supreme.<sup>7</sup> An act authorizing a municipal corporation to subscribe to the capital stock of a railroad corporation is not a contract.<sup>8</sup> The legislature may prohibit a municipal corporation from subscribing to the stock of a private corporation,<sup>9</sup> or may repeal an amendment to the charter allowing such subscription,<sup>10</sup> or may authorize a change in the mode of paying such subscription,<sup>11</sup> or may confirm a subscription not made in pursuance of the power conferred,<sup>12</sup> or may provide for the issue of the stock to taxpayers in proportion to their taxes,<sup>13</sup> or may provide that the filing of the affidavit of consent of taxpayers shall be conclusive evidence of such assent.<sup>14</sup> A vote of the people authorizing such subscription does not form a contract until the subscription is actually made.<sup>15</sup> Bonds issued to railroad companies are ever after valid and binding on the body issuing them.<sup>16</sup>

- 1 *San Antonio v. Jones*, 28 Tex. 19.
- 2 *Hill v. Comm. of Forsythe*, 67 N. C. 337.
- 3 *Marshall v. Silliman*, 61 Ill. 218; *Wiley v. Silliman*, 62 Ill. 170.
- 4 *Hetfield v. Fort Edward*, 70 N. Y. 28; *Horton v. Town of Thompson*, 71 N. Y. 513; *People v. Dupuyt*, 71 Ill. 651.
- 5 *Indiana Co. v. Agricultural Society*, 85 Pa. St. 359.
- 6 *Decker v. Hughes*, 63 Ill. 33. And see *Mason v. Shawneetown*, 77 Ill. 533.
- 7 *Reineman v. C. C. & B. H. R. R.* 7 Neb. 310.
- 8 *List v. Wheeling*, 7 West Va. 501.
- 9 *Aspinwall v. Commissioners*, 22 How. 364.
- 10 *Covington &c. R. R. Co. v. Kenton*, 12 B. Mon. 144.
- 11 *Louisville &c. R. R. Co. v. Davidson*, 1 Sneed, 637; *Hunsaker v. Borden*, 5 Cal. 288.
- 12 *City v. Railroad Co.* 15 Conn. 475; *Bass v. Mayor*, 38 Ga. 875; *McMillen v. Boyles*, 6 Iowa, 304; *Hannibal &c. R. R. Co. v. Marion*, 36 Mo. 294.
- 13 *Commissioners v. Lucas*, 93 U. S. 108.
- 14 *People v. Mitchell*, 45 Barb. 208.
- 15 *List v. Wheeling*, 7 West Va. 501.
- 16 *Lansing v. Muscatine Co.* 2 Abb. U. S. 59; *Lee Co. v. Rogers*, 7 Wall. 181. And see *Butz v. City of Muscatine*, 8 Wall. 585.

**Authority of legislature.**—It may confirm the election of officers made before act of incorporation,<sup>1</sup> or may remove an officer for refusal to take oath of allegiance,<sup>2</sup> or may require payment for services of an officer rendered under a prior act, which required such services to be paid for by other persons.<sup>3</sup> The legislature may alter the charter so as to change the person on whom service of process must be made,<sup>4</sup> or may withdraw the power to grant licenses,<sup>5</sup> or may change the mode and time of payment of a county debt,<sup>6</sup> or may regulate the mode of selection and removal of a county seat,<sup>7</sup> or may increase the number of directors which a municipal corporation is entitled to.<sup>8</sup> Where a municipal corporation has condemned land as a highway, and paid for it, a State cannot diminish the width of the highway and give the land back to the owner.<sup>9</sup> A statute to be accepted by a municipal corporation and a private corporation may be a contract;<sup>10</sup> but a statute taking from the board of supervisors the power to make a contract, and conferring that power on another, is not a contract.<sup>11</sup> A charter exempting corporation stock from taxation, except for State purposes, is binding on a municipal corporation.<sup>12</sup> A statute allowing a municipal corporation to set-off a claim for benefits against damages, is valid.<sup>13</sup>

- 1 *State v. Kilne*, 23 Ark. 587.
- 2 *State v. Adams*, 44 Mo. 570.
- 3 *Southworth v. City*, 24 La. An. 312.
- 4 *Perkins v. Watertown*, 5 Biss. 320; 5 Ch. L. N. 472.
- 5 *Gatzweiller v. People*, 14 Ill. 142; *Morris v. People*, 13 Wend. 325.
- 6 *Hunsaker v. Borden*, 5 Cal. 288.
- 7 *Moses v. Kearney*, 31 Ark. 261; *Elwell v. Tucker*, 1 Blackf. 285; *Armstrong v. Commissioners*, 4 Blackf. 208; *Hamrick v. House*, 17 Ga. 56; *Adams v. Logan*, 11 Ill. 336; *Harris v. Shaw*, 13 Ill. 456; *State v. Jones*, 1 Ired. 414; *Newton v. Commissioners*, 26 Ohio St. 618. But see *State v. Perry Co.* 5 Ohio St. 437.
- 8 *Miller v. State*, 15 Wall. 473; *People v. Hills*, 43 Barb. 340.
- 9 *People v. Commissioners*, 47 N. Y. 501; 53 Barb. 70.
- 10 *Central Bridge v. Lowell*, 8 Mass. 474.
- 11 *Pott v. Sheboygan Co.* 23 Wis. 506.
- 12 *State Bank v. Madison*, 3 Ind. 43; *Bank v. New Albany*, 11 Ind. 139.
- 13 *Baldwin v. Newark*, 9 Vroom, 153; *Loweree v. Newark*, Ibid. 151.

**Municipal contracts.**—Where the State authorizes a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power given cannot be withdrawn until the contract is satisfied.<sup>1</sup> A State cannot release a municipal corporation from its contracts without the consent of the other party;<sup>2</sup> nor require it to rescind a contract for the sale of land made by it;<sup>3</sup> nor impair a contract for street work;<sup>4</sup> nor can a municipal corporation revoke a donation actually made or impose new terms or duties on the donees.<sup>5</sup> If a municipal corporation may legally purchase property of a private corporation, a subsequent statute cannot interfere.<sup>6</sup> A municipal corporation may make such contracts as are allowed by the act of incorporation, but it cannot abridge its legislative power to bind its legislative capacity.<sup>7</sup> When it engages in things not public in their nature its acts bind them as much as if it were a natural person.<sup>8</sup> The power conferred to raise money by taxation is a political power, and its application is within the control of the legislature.<sup>9</sup> A State cannot authorize a municipal corporation to impose a tax which the State itself has no right to levy.<sup>10</sup> If a municipal corporation sells lots, the use of the streets passes as appurtenant, and it cannot afterward alter or defeat the dedication;<sup>11</sup> the compliance with the conditions of a grant is a contract.<sup>12</sup> A municipal corporation may waive a forfeiture.<sup>13</sup> An ordinance requiring a license fee after the granting of the right to run street-cars is void.<sup>14</sup> The repeal of an ordinance requiring a bond from an auctioneer cannot destroy or affect any right acquired under the



ordinance.<sup>15</sup> The legislature cannot revoke a municipal charter so as to destroy its lawful contracts, or impair their obligation.<sup>16</sup> An ordinance of a city council imposing a license on an insurance company authorized to transact business by State laws is not a violation of the obligation of contracts.<sup>17</sup>

1 Von Hoffman *v.* Quincy, 4 Wall. 535; People *v.* Bell, 10 Cal. 570; Dominic *v.* Sayre, 3 Sand. 555; Lansing *v.* Co. 1 Dill. 522; 2 Abb. U. S. 53.

2 Davenport Co. *v.* Davenport, 13 Iowa, 220; People *v.* Fishkill P. R. Co. 27 Barb. 445.

3 Butler *v.* Chariton, 13 Mo. 112.

4 Goodale *v.* Fennell, 27 Ohio St. 426.

5 Louisville *v.* University, 15 B. Mon. 642.

6 Sala *v.* N. O. 2 Woods, 188.

7 Gozzler *v.* Georgetown, 6 Wheat. 593; Presbyterian Church *v.* N. Y. 5 Cowen, 538; Coates *v.* N. Y. 7 Cowen, 585.

8 West. Sav. Fund *v.* Philadelphia, 31 Pa. St. 175, 185.

9 People *v.* Power, 25 Ill. 187.

10 O'Donnell *v.* Bailey, 24 Miss. 386; Camden & A. R. R. Co. *v.* Commissioners, 18 N. J. 71; Camden & A. R. R. Co. *v.* Hillegas, Ibid. 11.

11 Breed *v.* Cunningham, 2 Cal. 361.

12 Brooklyn C. R. R. Co. *v.* Brooklyn Cit. R. R. R. Co. 32 Barb. 358.

13 State *v.* Railroad Co. 3 How. 534; 12 Gill & J. 399; Coles *v.* Madison, Breese, 115.

14 Mayor *v.* Second Av. B. R. Co. 34 Barb. 41; In re Peters, N. Y. El. R. R. 70 N. Y. 327.

15 McMechan *v.* Mayor, 2 Har. & J. 41.

16 Bleakey *v.* Williams, 20 Pitts. L. J. 66.

17 Home Ins. Co. *v.* City Council, 93 U. S. 115; Osborne *v.* Mobile, 16 Wall. 482.

**Municipal Liabilities.**—An act of the State legislature which prohibits from levying taxes to pay a judgment is void if it deprives the creditor of every means for the collection of his debt.<sup>1</sup> A statute providing another and different mode of payment of a warrant for county indebtedness than that provided in the contract, is void;<sup>2</sup> so, requiring the holders of a county warrant bearing interest to surrender them, and accept a bond bearing less interest, is void.<sup>3</sup> If a corporation obtain a loan by placing certain property in the hands of trustees as security, it cannot subsequently make a change in the selection of trustees.<sup>4</sup> A statute exempting property of a municipal corporation from forced sale on execution is valid, if no prior statute has authorized a levy thereon;<sup>5</sup> so, a statute providing a redemption fund to meet indebtedness may provide that preference be given to the proposal that offers the largest amount of indebtedness for the least

amount of money.<sup>6</sup> A statute making one municipal corporation liable instead of another is valid.<sup>7</sup>

1 *Scutter v. Madison*, 15 Wis. 30.

2 *Rose v. Estudillo*, 39 Cal. 270.

3 *Brewer v. Otoe Co.* 1 Neb. 373.

4 *West. Sav. Fund v. Philadelphia*, 31 Pa. St. 175, 185.

5 *Gilman v. Contra Costa Co.* 8 Cal. 52.

6 *Youngs v. Hall*, 9 Nev. 212. But see *Bleakley v. Williams*, 20 Pitts. L. J. 66.

7 *Rader v. S. R. Dist.* 6 Vroom. 273.

**Municipal bonds.**—If a statute authorizing a municipal corporation to issue bonds provides for a tax to pay the same, it is a contract,<sup>1</sup> and a subsequent act cannot destroy the corporation.<sup>2</sup> If a fund is pledged for the payment of municipal bonds a subsequent statute cannot authorize its diversion so as to impair the security of the bond-holders.<sup>3</sup> An act providing for the redemption of the bonds at less than par, and authorizing a loan of the fund if no bonds are tendered for redemption, is void.<sup>4</sup> A statute authorizing a municipal corporation to issue bonds does not impair the obligation of a grant of land to individual citizens from the State.<sup>5</sup> If a statute authorizing condemnation of land for a park provides that the bonds issued shall be a lien thereon, no subsequent act can provide for the sale of the land free from the lien, although the proceeds are to form a sinking fund for the use of the bond-holders.<sup>6</sup> An act passed prohibiting the issue of bonds for any purpose but the one specified is not subject to repeal or amendment.<sup>7</sup> The legislature may validate municipal bonds illegally issued.<sup>8</sup> A statute cannot compel a party to surrender the evidence of indebtedness and take another in its place.<sup>9</sup>

1 *Maenhut v. N. O. 2 Woods*, 108; *Ranger v. N. O. 2 Woods*, 128.

2 *Milner v. Pensacola*, 2 Woods, 632.

3 *People v. Woods*, 7 Cal. 579; *People v. Supervisors*, 12 Cal. 300; *People v. Bond*, 10 Cal. 563; *People v. Tillinghast*, 10 Cal. 584; *English v. Supervisors*, 19 Cal. 172; *Board v. Fowler*, 19 Cal. 11; *Trustees v. Bailey*, 10 Fla. 112; *West. Sav. Fund v. Philadelphia*, 31 Pa. St. 175, 185.

4 *Goldsmith v. Brown*, 5 Or. 418.

5 *McCoy v. Washington Co.* 3 Wall. Jr. 381; 3 Phila. 290.

6 *Brooklyn Park v. Armstrong*, 45 N. Y. 234.

7 *Smith v. Appleton*, 19 Wis. 463.

8 *Kunkle v. Franklin*, 13 Minn. 127; *Comm. v. Folsom*, 13 Minn. 219.

9 *People v. Morse*, 43 Cal. 535; *Rose v. Estudillo*, 39 Cal. 270.

**Police powers.**—It is the province of the legislature to determine the exigency calling for the exercise of police powers, and of the courts to decide the proper subjects of its exercise,<sup>1</sup> and it cannot by any contract divest itself of this power,<sup>2</sup> nor of its discretion in its exercise.<sup>3</sup> The police powers comprehend all those general laws of internal regulation necessary to secure peace, good order, health, and the comfort of society,<sup>4</sup> private interests being subservient to the general interests of the community.<sup>5</sup> The legislature may forbid an individual from undertaking a dangerous employment, except at his own risk,<sup>6</sup> or it may prohibit a hazardous or pernicious business, although it affects prior contracts.<sup>7</sup> So, it may regulate the sale of naphtha or inflammable oils.<sup>8</sup> A subsequent statute may prohibit the transportation of dead animals under a charter allowing their use as fertilizers.<sup>9</sup> So, a statute prohibiting a lottery is valid, though the charter gave a right to establish one.<sup>10</sup> A State legislature may pass laws regulating the observance of the Sabbath,<sup>11</sup> or may give a remedy against nuisances.<sup>12</sup> Every citizen holds his land subservient to such police regulation as the legislature in its wisdom may enact for the general welfare.<sup>13</sup> The States may regulate the carrying on of business within its limits.<sup>14</sup> So, State laws may impose reasonable police regulations for the protection of markets against the sale of commodities unfit for commerce,<sup>15</sup> or may regulate the sale of any commodity the use of which would be detrimental to the morals of the people.<sup>16</sup> The legislature may regulate the sale of spirituous or malt liquors;<sup>17</sup> or prohibit their sale if it does not interfere with vested rights;<sup>18</sup> or impair the obligations of the charter created for the purpose of their manufacture.<sup>19</sup> So, a State may tax liquor-dealers,<sup>20</sup> or may license the sale of liquors, although a charter contains a prohibitory clause.<sup>21</sup> It may establish reasonable regulations for the operation of mines,<sup>22</sup> and under the police power may require qualifications for professional graduates.<sup>23</sup> When applied to corporations the police power is subject to constitutional limitations, and it cannot conflict with the charter;<sup>24</sup> but provisions for penalties and forfeitures in a charter are not mere matters of contract.<sup>25</sup> The legislature may authorize cities and towns to prohibit the erection of wooden buildings as a protection of person and property against fire.<sup>26</sup> Under the police power the legislature may authorize a railroad company to lay its tracks in the streets of a city.<sup>27</sup> An ordinance regulating the transportation of heavy merchandise in a city is valid.<sup>28</sup> Congress cannot legislate on the internal police of a State.<sup>29</sup>

- 1 *Lake View v. Rose Hill Cemetery*, 70 Ill. 191; *Daniels v. Hilgard*, 77 Ill. 640.
- 2 *Beer Co. v. Massachusetts*, 97 U. S. 25.
- 3 *Boyd v. Alabama*, 94 U. S. 645; *Beer Co. v. Massachusetts*, 97 U. S. 33.
- 4 *Ex parte Shrader*, 33 Cal. 279; *Philadelphia &c. R. R. Co. v. Bowers*, 4 Houst. 506; *Beer Co. v. Massachusetts*, 97 U. S. 25.
- 5 *Slaughter-House Cases*, 16 Wall. 62; *Comm. v. Alger*, 7 Cush. 53.
- 6 *Kirby v. Pennsylvania R. R. Co.* 76 Pa. St. 506.
- 7 *People v. Hawley*, 3 Mich. 330.
- 8 *U. S. v. Dewitt*, 9 Wall. 41.
- 9 *Fertilizing Co. v. Hyde Park*, 70 Ill. 634; 97 U. S. 669.
- 10 *Moore v. State*, 43 Miss. 147.
- 11 *Bohl v. State*, 3 Tex. Ct. App. 683.
- 12 *Fertilizing Co. v. Hyde Park*, 97 U. S. 669; 70 Ill. 634; *Brady v. Weeks*, not yet reported.
- 13 *Brown v. Keener*, 74 N. C. 714; *Pool v. Trexler*, 76 Ibid. 297.
- 14 *Higgins v. Rinker*, 47 Tex. 381.
- 15 *State v. Fosdick*, 21 La. An. 256; *N. H. &c. T. B. Co. v. Bunnell*, 4 Conn. 59; *Fertilizing Co. v. Hyde Park*, 97 U. S. 669.
- 16 *State v. Gurney*, 37 Me. 156.
- 17 *Higgins v. Rinker*, 47 Tex. 393.
- 18 *Bertholf v. O'Reilly*, 15 Am. Law Reg. N. S. 119; *Metrop. Bd. of Excise v. Barrie*, 34 N. Y. 657; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Butler v. Walker*, 80 Ill. 345; *Comm. v. Intox. Liq.* 115 Mass. 153.
- 19 *Commonwealth v. Intox. Liq.* 115 Mass. 153.
- 20 *Sinclair v. State*, 69 N. C. 47.
- 21 *Dingman v. People*, 51 Ill. 277.
- 22 *Daniels v. Hilgard*, 77 Ill. 640; *Dingman v. People*, 51 Ill. 277.
- 23 *Regents v. Williams*, 9 Gill & J. 365; *State v. Heyward*, 3 Rich. 389; *Logan v. State*, 5 Tex. Ct. App. 306.
- 24 *Lake View v. Rose Hill Cemetery*, 70 Ill. 191; *State v. Fosdick*, 21 La. An. 256.
- 25 *State v. Railroad Co.* 3 How. 534; 12 Gill & J. 399.
- 26 *Salem v. Maynes*, 123 Mass. 372.
- 27 *Perry v. N. O. R. R. Co.* 55 Ala. 613.
- 28 *People v. James*, 16 Hun. 426.
- 29 *Gibbons v. Ogden*, 9 Wheat. 203; *U. S. v. De Witt*, 9 Wall. 41; *Slaughter-House Cases*, 16 Wall. 36; *Railroad Co. v. Fuller*, 17 Wall. 560.

*<sup>2</sup>No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.*

**Imports** refer only to goods imported from a foreign country.<sup>1</sup> An "impost" is a custom, or tax, levied on articles brought into the country. It is not merely a duty on the act of importation, but a duty on the thing imported.<sup>2</sup> The prohibition is an exception on the power of the State to levy taxes.<sup>3</sup> The object of the prohibition is to protect both vessel and cargo from State taxation while *in transitu*, and this prohibition cannot be evaded and the same result effected by calling it a tax on passengers or on the master.<sup>4</sup> The prohibition is general, and reaches a tax on the sale of the article imported and on the occupation of the importer.<sup>5</sup> By payment of duty, the importer purchases the right to dispose of his goods as well as to bring them into the country.<sup>6</sup> While the import remains the property of the importer, in the original form or package, a tax on it is a duty on imports.<sup>7</sup> A tax on a bill of lading of foreign articles is a tax on imports, and void;<sup>8</sup> so, a tax on passengers is void.<sup>9</sup> A stamp-tax on a foreign bill of exchange drawn in the State is not an impost or tax on exports;<sup>10</sup> but a stamp-tax required on the export of gold dust is an export tax.<sup>11</sup> A State law imposing a transit duty on foreign corporations for persons or goods transported in the State is not a tax on imports or exports,<sup>12</sup> nor a provision in a railroad charter that all tonnage carried shall be subject to a toll, or duty, per mile;<sup>13</sup> so, a tax on the gross receipts of an express company engaged in carrying goods between States is valid.<sup>14</sup> The payment of duties includes the authority to sell without the necessity of a State license; so, a State law requiring importers to take out a license to sell imported goods is an indirect tax on imports.<sup>15</sup> A tax on sales of imported merchandise in original packages by brokers and auctioneers is unconstitutional;<sup>16</sup> but a tax on the gross sales of a purchaser from the importer is not a tax on imports.<sup>17</sup> A tax on sales is a tax on the proceeds, and not on the imports.<sup>18</sup> Requiring a license for non-resident traders to vend foreign merchandise is not a tax on imports or exports,<sup>19</sup> nor is a provision requiring hawkers and peddlers to take out a license.<sup>20</sup> A State may impose a penalty on those who sell foreign goods without a

license.<sup>21</sup> State pilot laws are not embraced in the words "imposts or duties on imports."<sup>22</sup> A State cannot impose a tax or toll on lumber floated down into another State.<sup>23</sup> A State law providing for a gauger at a port of delivery is not unconstitutional.<sup>24</sup> That the net produce shall be for the United States applies only to tax laws for inspection purposes.<sup>25</sup> See Supplement, *post*, 311.

1 *Brown v. Maryland*, 12 Wheat. 419; *Gibbons v. Ogden*, 9 Wheat. 1; *Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*, 8 Wall. 148; 40 Ala. 123; *License Cases*, 5 How. 504; 13 N. H. 536; *State v. Pinckney*, 10 Rich. 474; *State v. Charleston*, 10 Rich. 240; *State Tax on R. R. Gross Receipts*, 15 Wall. 284; *Harrison v. Mayor*, 11 Miss. 581; *Board v. Pleasants*, 23 La. An. 349.

2 *Brown v. Maryland*, 12 Wheat. 419; *Hinson v. Lott*, 8 Wall. 148; 40 Ala. 123; *Bode v. State*, 7 Gill. 326; *State v. Sluby*, 2 Harr. & J. 480; *Wynne v. Wright*, 4 Dev. & B. 19; *State Freight Tax Case*, 15 Wall. 232; *Sheffield v. Parsons*, 3 Stewt. & P. 302.

3 *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150; *Hamilton Co. v. Massachusetts*, 6 Wall. 639.

4 *Passenger Cases*, 7 How. 233; 45 Mass. 282; *People v. Downer*, 7 Cal. 169; *Crandall v. Nevada*, 6 Wall. 35.

5 *Brown v. Maryland*, 12 Wheat. 419; *License Cases*, 5 How. 504; *State v. North*, 27 Mo. 464; *Biddle v. Commonwealth*, 13 Serg. & R. 405.

6 *Brown v. Maryland*, 12 Wheat. 419; *Hinson v. Lott*, 8 Wall. 148; 40 Ala. 123.

7 *Brown v. Maryland*, 12 Wheat. 447; *License Cases*, 5 How. 504; 13 N. H. 536; *Low v. Austin*, 13 Wall. 29; *Wynne v. Wright*, 4 Dev. & B. 19; *State v. Charleston*, 10 Rich. 240; *State v. Shapleigh*, 27 Mo. 434; *Woodruff v. Parham*, 8 Wall. 123; *State Tax on R. R. Gross Receipts*, 15 Wall. 284; *Murray v. Charleston*, 56 U. S. 447; *State v. North*, 27 Mo. 464.

8 *Almy v. People*, 24 How. 169; *Brummagin v. Tillinghast*, 18 Cal. 265.

9 *Passenger Cases*, 7 How. 283.

10 *Ex parte Martin*, 7 Nev. 140.

11 *Almy v. California*, 24 How. 169, distinguished in *Pace v. Burgess*, 92 U. S. 376.

12 *State v. Delaware L. & A. R. R. Co.* 31 N. J. 531.

13 *Pennsylvania R. R. Co. v. Commonwealth*, 3 Grant, 123.

14 *Southern Express Co. v. Hood*, 15 Rich. 66.

15 *Gibbons v. Ogden*, 9 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419; *License Cases*, 5 How. 504; *Pervear v. Commonwealth*, 5 Wall. 478; *Waring v. The Mayor*, 8 Wall. 110.

16 *People v. Moring*, 47 Barb. 642; 3 Abb. App. 539; *Cook v. Pennsylvania*, 6 Amer. L. R. 378.

17 *Waring v. Mayor*, 8 Wall. 110; 4 Ala. 139.

18 *State v. Pinckney*, 18 Rich. 474.

19 *Sears v. Commissioners*, 36 Ind. 267.

20 *Commonwealth v. Ober*, 66 Mass. 493.

21 *Beall v. Indiana*, 4 Blackf. 107; *Raguet v. Wade*, 4 Ohio, 107; *People v. Coleman*, 4 Cal. 46.

22 *Cooley v. Port Wardens*, 12 How. 299; *Baker v. Wise*, 16 Gratt. 139.

23 *C. R. L. Co. v. Patterson*, 33 Cal. 334.

24 *Addison v. Saulnier*, 19 Cal. 82.

25 *Padelford v. Mayor*, 14 Ga. 438.

**State inspection laws.**—The power of the State to pass inspection laws is retained subject to the control and revision of Congress.<sup>1</sup> The consent of Congress need not be given in advance, but may be implied from legislation.<sup>2</sup> Inspection laws may apply to imports as well as exports.<sup>3</sup> A State may lay a tax on imports to pay for services performed in inspecting the articles, if passed in good faith, and not for the object of raising revenue.<sup>4</sup> The power to pass inspection laws involves the power to enforce them, and the fees for remuneration of officers are not imposts.<sup>5</sup> Whether such fees are excessive is a question to be determined by Congress.<sup>6</sup> The removal or destruction of infectious or unsound articles is an exercise of the power of inspection.<sup>7</sup> See Supplement, *post*, 311.

1 *Gibbons v. Ogden*, 9 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419; *State Ton. Tax. Cases*, 12 Wall. 204; *Railroad Co. v. Peniston*, 18 Wall. 29; *Sheffield v. Parsons*, 3 Stewt. & P. 302.

2 *Green v. Biddle*, 8 Wheat. 1; *Virginia v. West Virginia*, 11 Wall. 59.

3 *Neilson v. Garza*, 2 Woods, 287.

4 *Green v. State*, R. M. Charl. 368.

5 *Addison v. Saulnier*, 19 Cal. 82.

6 *Neilson v. Garza*, 2 Woods, 287.

7 *Brown v. Maryland*, 12 Wheat. 419.

**State taxation, when valid.**—The authority of a State to tax property, business, and persons within its limits, is not affected by this provision.<sup>1</sup> Goods imported in the hands of the importer are not a mass of the property of the State,<sup>2</sup> but after the goods have been broken up for use, or for retail, and been incorporated and mixed up with the mass of the property of the State, a tax may be imposed;<sup>3</sup> but if a State singles out imports as a special object for any impost or duty, it is unlawful,<sup>4</sup> though after becoming incorporated into the mass of State property the State may lay taxes discriminating against them.<sup>5</sup> An importing merchant may be taxed on what he is worth like any other citizen;<sup>6</sup> so, a State may tax capital although continually invested in cotton purchased for exportation.<sup>7</sup> A purchaser from an importer is subject to taxation.<sup>8</sup> The articles cease to be importations the moment the importer becomes a vendor.<sup>9</sup>

1 *Railroad Co. v. Peniston*, 18 Wall. 29.

2 *Almy v. California*, 24 How. 169; *Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*. *Ibid.* 148; *Low v. Austin*, 13 Wall. 34.

3 *Brown v. Maryland*, 12 Wheat. 419; *License Cases*, 5 How. 575; *Parvear v. Commonwealth*, 5 Wall. 479; *Waring v. Mayor*, 8 Wall. 122;

State Tax on Railroad G. Receipts, 15 Wall. 295; *People v. Coleman*, 4 Cal. 46; *Wynne v. Wright*, 4 Dev. & B. 19; *Cowles v. Brittain*, 2 Hawks, 204; *Tracy v. State*, 3 Mo. 3; *Davis v. Dashiell*, Phill. (N. C.) 114; *Cummings v. Savannah*, R. M. Charlt. 26; *Biddle v. Commonwealth*, 13 Serg. & R. 405; *Woodruff v. Parham*, 41 Ala. 334; *Murray v. Charleston*, 96 U. S. 447. But see *State v. North*, 27 Mo. 464. And see *Raguet v. Wade*, 4 Ohio, 107.

- 4 *People v. Moring* 47 Barb. 642.
  - 5 *Davis v. Dashiell*, Phill. N. C. 114.
  - 6 License Cases, 5 How. 504; 13 N. H. 536; *State v. Pinckney*, 10 Rich. 474.
  - 7 *People v. Tax Commissioners*, 17 N. Y. Supr. 255.
  - 8 *Waring v. The Mayor*, 8 Wall. 110.
  - 9 *State v. Peckham*, 3 R. I. 289.
- See Supplement, *post*, 311.

<sup>3</sup> *No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.*

**Tonnage duties.**—A tonnage duty is a tax on the capacity of the vessel.<sup>1</sup> The prohibition in this provision was intended to protect the freedom of commerce, and should be so construed.<sup>2</sup> It is general, withdrawing the power except by the consent of Congress.<sup>3</sup> The consent of Congress need not be given in advance, but may be implied from legislation.<sup>4</sup> Duty signifies a tax, custom, or toll,<sup>5</sup> proportioned to the size of the vessel or its tonnage.<sup>6</sup> Not only is a *pro rata* tax prohibited, but any duty, whether a fixed sum on tonnage or a sum comparing the rate with the tonnage.<sup>7</sup> Thus, a tax on the master or cargo, or on some privilege to be enjoyed by the vessel, as of engaging in a particular trade, if really and substantially a duty on tonnage, is within the prohibition,<sup>8</sup> and this protection extends to all vessels employed in the coasting trade, whether in commercial intercourse between the ports of different States, or ports of the same State;<sup>9</sup> so, a tax on ships entering a port,<sup>10</sup> or plying the waters of the State, is void.<sup>11</sup> Requiring vessels carrying oysters taken out of the State to take out a license and pay a tax proportioned to the tonnage,<sup>12</sup> or laying a tonnage duty on vessels employed as lighters to assist vessels engaged in foreign commerce,<sup>13</sup> is a violation of this provision. That the tax does not go into the public treasury does not prevent its being a duty on tonnage.<sup>14</sup> A tonnage tax cannot be employed as a means



of enforcing some law which is within the constitutional authority of the State to enact;<sup>15</sup> so, a State cannot impose a tax or duty on tonnage to raise revenue to defray the expenses of its quarantine system,<sup>16</sup> but a toll applied to paying for improvements made on a navigable river is not in the nature of a tonnage duty,<sup>17</sup> nor is a toll or duty on all tonnage carried by a railroad at a certain rate per mile.<sup>18</sup> A State cannot levy a tax on tonnage upon interstate transportation,<sup>19</sup> but a tax on gross receipts is not repugnant, being in the nature of a general income;<sup>20</sup> nor are pilot fees,<sup>21</sup> nor charges for wharfage, though graduated by the tonnage of the vessel.<sup>22</sup>

See *post*, 311.

- 1 *South Carolina v. Charleston*, 4 Rich. 289.
- 2 *Keokuk N. P. Co. v. Keokuk*, 10 Chic. L. N. 91.
- 3 *State Ton. Tax Cases*, 12 Wall. 214; *People v. R. & S. R. R. Co.* 15 Wend. 131; *Steamboat Co. v. Livingston*, 3 Cowen, 743; *Sheffield v. Parsons*, 3 Stewt. & P. 302.
- 4 *Green v. Biddle*, 8 Wheat. 1; *Virginia v. West Virginia*, 11 Wall. 53.
- 5 *Sheffield v. Parsons*, 3 Stewt. & P. 302.
- 6 *Inman S. S. Co. v. Tinker*, 94 U. S. 238.
- 7 *Johnson v. Drummond*, 20 Gratt. 419.
- 8 *Johnson v. Drummond*, 20 Gratt. 419.
- 9 *State Ton. Tax Cases*, 12 Wall. 204; *Lott v. Morgan*, 41 Ala. 246.
- 10 *Cannon v. New Orleans*, 20 Wall. 577; *N. W. U. P. Co. v. S. Paul*, 3 Dill. 454; *Steamship Co. v. Port Wardens*, 6 Wall. 31.
- 11 *Lott v. Mobile Trade Co.* 42 Ala. 573; *Lott v. Cox*, 43 Ala. 697.
- 12 *Jonson v. Drummond*, 20 Gratt. 419.
- 13 *Lott v. Morgan*, 41 Ala. 246.
- 14 *Sheffield v. Parsons*, 3 Stewt. & P. 302; *Alexander v. R. R. Co.* 3 Strob. 524.
- 15 *Johnson v. Drummond*, 20 Gratt. 419.
- 16 *Peete v. Morgan*, 19 Wall. 531.
- 17 *Thames Bank v. Lovell*, 13 Conn. 500.
- 18 *Pennsylvania R. R. Co. v. Commissioners*, 3 Grant, 128.
- 19 *State Freight-Tax Cas.* 15 Wall. 232; *Osborne v. Mobile*, 16 Wall. 479; *Southern Exp. Co. v. Mayor*, 43 Ala. 404.
- 20 *State Tax on R. R. Gross Receipts*, 15 Wall. 234; *Osborne v. Mobile*, 16 Wall. 481.
- 21 *Cooley v. Port Wardens*, 12 How. 299; *Baker v. Wise*, 16 Gratt. 139.
- 22 *Cannon v. New Orleans*, 20 Wall. 577; *The Ann Ryan*, 7 Ben. 20; *N. W. U. P. Co. v. St. Louis*, 4 Cent. L. J. 53; *Keokuk v. Packet Co* 2d. 276; *Wharf Case*, 3 Bland, 261; *Keokuk v. K. & C. Co.* 45 Iowa, 196.

**Tonnage duty.**—When a vessel, as an instrument of commerce, is required to pay a duty as a condition to her entry or departure, loading or unloading, either on her tonnage or property, or as a license, it is a duty on tonnage under this prohibition.<sup>1</sup> A tax levied on a vessel irrespective of its value as property, and solely and exclusively on the basis of its tonnage, is a duty on tonnage;<sup>2</sup> but taxes laid on vessels as property of the State at her home-port are valid,<sup>3</sup> although registered and enrolled by the United States.<sup>4</sup> So, the assessment of a vessel in its own city for a city tax is not a duty on tonnage.<sup>5</sup> A State law requiring vessels to pay a fee for pilotage is valid.<sup>6</sup> A charge for services rendered or conveniences provided is in no sense a tax or duty.<sup>7</sup> So, a statute allowing fees to harbor-masters for assigning vessels to their berths is not a tonnage duty, although the fees are ascertained by the burden or tonnage;<sup>8</sup> but a law allowing fees, whether to port-wardens or harbor-masters, whether rendering services or not, is a duty on tonnage.<sup>9</sup> A State may legislate as to wharfage,<sup>10</sup> and regulate the compensation.<sup>11</sup> Wharfage charges are not a duty on tonnage,<sup>12</sup> whether the wharf be built by the State, a municipal corporation, or a private individual;<sup>13</sup> but where a statute discriminates as to products of other States, it is unconstitutional.<sup>14</sup> A tax due from all vessels arriving and stopping, or departing, and not mere *pro* for the use of the wharf, is inhibited.<sup>15</sup> Neither the State nor a municipal corporation can impose a tax on tonnage under cover of a law ostensibly passed to collect wharfage.<sup>16</sup> A city may exact and receive a reasonable compensation for the use of artificial improvements.<sup>17</sup> And an ordinance regulating the charge for wharfage may be enforced unless beyond the limits of a just compensation.<sup>18</sup> See *post*, 312.

1 *Gibbons v. Ogden*, 9 Wheat. 1; *Passenger Cases*, 7 How. 283; *Steamship Co. v. Port Wardens*, 6 Wall. 31; *State Tonnage Tax Cases*, 12 Wall. 204; *Cannon v. New Orleans*, 20 Wall. 577; 27 La. Ann. 16.

2 *State Ton. Tax Cases*, 12 Wall. 204.

3 *State Ton. Tax Cases*, 12 Wall. 212; *Passenger Cases*, 7 How. 283; *Lott v. Mobile T. Co.* 42 Ala. 578; *Lott v. Cox*, 43 Ala. 697; *Morgan v. Parham*, 16 Wall. 472.

4 *Lott v. Mobile T. Co.* 42 Ala. 578; *Lott v. Cox*, 43 *Ibid.* 697.

5 *The North Cape*, 6 Bliss. 505.

6 *Cooley v. Port Wardens*, 12 How. 29; *Baker v. Wise*, 16 Gratt. 139.

7 *Keokuk N. P. Co. v. Keokuk*, 10 Chic. L. N. 91; 5 Cent. L. J. 504.

8 *State v. Charleston*, 4 Rich. 286; *Benedict v. Vanderbilt*, 1 Robt. 194; *Port Wardens v. The Martha J. Ward*, 14 La. Ann. 289; *Master v. Prats*, 10 Rob. La. 459.

9 *Southern Steamship Co. v. Port Wardens*, 6 Wall. 31; *Inman S. S. Co. v. Tinker*, 94 U. S. 28; *Hackley v. Geraghty*, 34 N. J. 332; *Sheffield v. Parsons*, 3 Stew. & P. 302; *Alexander v. Railroad Co.* 3 Strob. 594. But see *City v. The Nautilus*, 8 Int. Rev. Rec. 91; *Port Wardens v. The Martha J. Ward*, 14 La. An. 289; *Port Wardens v. The Charles Morgan*, *Ibid.* 535.

10 *The Ann Ryan*, 7 Ben. 20.

11 *Cannon v. New Orleans*, 20 Wall. 577.

12 *Cooley v. Port Wardens*, 12 How. 299; *Packet Co. v. Keokuk*, 95 U. S. 84; 10 Ch. L. N. 91; 5 Cent. L. J. 504; *Cannon v. New Orleans*, 20 Wall. 577; *Sterrett v. Houston*, 14 Tex. 166; *Municipality v. Pease*, 2 La. Ann. 538; *The Ann Ryan*, 7 Ben. 20.

13 *Packet Co. v. Keokuk*, 95 U. S. 84; 10 Ch. L. N. 91; 5 Cent. L. J. 504; *Cannon v. New Orleans*, 20 Wall. 577.

14 *Wharf Case*, 3 Bland, 361.

15 *Cannon v. New Orleans*, 20 Wall. 577; *Northwestern U. P. Co. v. St. Paul*, 3 Dill. 454; 7 Ch. L. N. 331.

16 *Packet Co. v. Keokuk*, 95 U. S. 84; 10 Ch. L. N. 91; 5 Cent. L. J. 504; *State Ton. Tax Cas.* 12 Wheat. 219; *Alexander v. Railroad Co.* 3 Strob. 534.

17 *Northwestern U. P. Co. v. St. Louis*, 4 Dill. 10; 7 Ch. L. N. 331; *Cannon v. New Orleans*, 20 Wall. 577; *Worsley v. Municipality*, 9 Rob. Lr. 324; *Packet Co. v. Keokuk*, 95 U. S. 84; 10 Ch. L. N. 91; 5 Cent. L. J. 504.

18 *Packet Co. v. Keokuk*, 95 U. S. 84; 10 Ch. L. N. 91; 5 Cent. L. J. 504.

**Agreements or compacts.**—The right and duty to protect the interests of the States is vested in the General Government.<sup>1</sup> The term “agreement” includes every agreement, verbal or written, formal or informal, positive or implied, with each other or with foreign powers.<sup>2</sup> Such agreement or compact as is in its nature political, or which may conflict with the powers delegated to the General Government,<sup>3</sup> as on the question of boundary between States,<sup>4</sup> or the delivery up of fugitives,<sup>5</sup> cannot operate as a restriction upon the powers of Congress under the Constitution.<sup>6</sup> The prohibition is political, and has no reference to contracts or to the grant of a franchise.<sup>7</sup> The agreement between corporations chartered by different States, to unite, is not an agreement or compact between States.<sup>8</sup> The mode or form in which the consent of Congress is to be signified, is left to the discretion of that body. It need not be given in advance, but may be implied from legislation.<sup>9</sup> A compact made with consent of Congress is binding on the States entering into the agreement.<sup>10</sup> The confederation of the Southern States was in direct violation of this clause.<sup>11</sup> See Supplement, *post*, 312.

1 *Florida v. Georgia*, 17 How. 478.

2 *Holmes v. Jennison*, 14 Peters, 540.

3 *Union R. R. Co. v. East Tenn. R. R. Co.* 14 Ga. 327.

4 *Florida v. Georgia*, 17 How. 478.

- 5 Holmes v. Jennison, 14 Peters, 574; 3 Op. Atty. Gen. 661.
- 6 Willson v. Mason, 1 Cranch, 45; Pennsylvania v. Wheeling &c. Br. Co. 18 How. 421.
- 7 Union Branch R. R. Co. v. East Tenn. & G. R. R. Co. 14 Ga. 327.
- 8 Dover v. Portsmouth Bridge, 17 N. H. 200.
- 9 Green v. Biddle, 8 Wheat 1; Virginia v. West Virginia, 11 Wall-59; Canal Co. v. Railroad Co. 4 Gilf & J. 1.
- 10 Poole v. Fleeger, 11 Peters, 185.
- 11 In re Milner, 1 Bank. Reg. 107.

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## ARTICLE II.

### EXECUTIVE DEPARTMENT.

#### SECTION 1.

##### *Powers of Executive.*

1. President and Vice-President. Terms of.
2. Electors.
3. Manner of choosing President by electors.
4. Time of choosing electors.
5. President's qualifications.
6. Vacancy in office of.
7. Salary.
8. Oath.

**Sec. 1.** <sup>1</sup> *The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:*

**Executive power.**—The President is invested with certain political powers, in the exercise of which he may use his discretion, which is beyond the control of the judiciary.<sup>1</sup> As far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed—through the impeaching power.<sup>2</sup> He is exempt from the writ of *habeas corpus*.<sup>3</sup> He is authorized to appoint certain officers in the executive departments, the discharge of whose duties is under his direction.<sup>4</sup> Congress may authorize the President to restrict or regulate the introduction of merchandise into a territory under such penalties as Congress may prescribe;<sup>5</sup> but he has no common-law prerogative to

interdict commercial intercourse with any nation, or revive any act whose operation has expired.<sup>6</sup> So, Congress may authorize the President, during a certain period, to suspend the writ of *habeas corpus* when, in his judgment, the public safety requires it.<sup>7</sup> If the President assumes powers which should have the authority or sanction of Congress, a ratification cures the defect.<sup>8</sup> Congress may impose on any executive officer any duty which is not repugnant to any right which is secured and protected by the Constitution.<sup>9</sup>

1 *Marbury v. Madison*, 1 Cranch, 165.

2 *Kendall v. U. S. 12 Peters*, 524; 5 Cranch C. C. 163; *In re Keeler*, Hemp. 306.

3 *In re Keeler*, Hemp. 306.

4 *Marbury v. Madison*, 1 Cranch, 165; *Kendall v. U. S. 12 Peters*, 524; 5 Cranch C. C. 163.

5 *The Louisa Simpson*, 2 Sawy. 57; *U. S. v. The Francis Hatch*, 13 Am. Law Reg. 289.

6 *The Orono*, 1 Gall. 137.

7 *McCall v. McDowell*, Deady, 233; 1 Abb. U. S. 212; *In re Oliver*, 17 Wis. 681.

8 *Prize Cases*, 2 Black, 635.

9 *Marbury v. Madison*, 1 Cranch, 137; *Kendall v. U. S. 12 Peters*, 524; 5 Cranch C. C. 163.

*Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.*

**Electors, choice of.**—A State law directing the manner of appointment of electors has its authority solely from the Constitution.<sup>1</sup> The disqualification of the person having the highest number of votes does not have the effect of electing the minority candidate;<sup>2</sup> such disqualification cannot be removed by resignation, unless the resignation takes place before the election. The office of Commissioner of the United States Centennial Commission is an office of trust. A person disqualified as an elector by holding "office of trust or profit" under the United States, cannot remove the disqualification by resignation unless it precedes his appointment as elector.

1 *Ex parte Hayne*, 1 Hughes, 571.

2 *In re Corliss*, 11 R. I. 638; 16 Am. Law Reg. 15.

See Supplement, page 323.

<sup>3</sup> [The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

Superseded by XIIIth Amendment, *post*.

<sup>4</sup> The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

<sup>5</sup> No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

<sup>6</sup> In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the Pres-

ident and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

<sup>1</sup> The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

<sup>2</sup> Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

**Oath.**—The President is the only officer required to take this oath.<sup>1</sup> The oath simply obliges the President to obey the Constitution, and to use the power which it confers on him to cause others to obey it.<sup>2</sup> The oath gives the President no additional powers.<sup>3</sup>

1 *Metropolitan Bank v. Van Dyck*, 27 N. Y. 408.

2 *Griffin v. Wilcox*, 21 Ind. 370.

3 *In re Kemp*, 16 Wis. 359.

## SECTION 2.

### *Other powers and duties.*

1. Act as Commander-in-Chief. Reprieves, pardons.
2. To make treaties, how. Appointments.
3. To fill vacancies.

**Sec. 2.** <sup>1</sup> The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

**As Commander-in-Chief.**—The power of calling out the militia is conferred on the President,<sup>1</sup> and his authority to decide that the exigency has arisen is vested exclusively in him.<sup>2</sup> Where the law gives the President a discretionary power he is the sole and exclusive judge of the existence of the facts.<sup>3</sup> On the application of a State the President may call forth the militia to suppress an insurrection.<sup>4</sup> He is authorized by law, previous to a declaration of war by Congress, to meet invasion or insurrection by military force.<sup>5</sup> His power as Commander-in-Chief is limited by the laws and usages of nations,<sup>6</sup> and to be used only in the manner prescribed by the legislative department,<sup>7</sup> and his orders are no protection to an officer acting under them unless warranted by law.<sup>8</sup> So, an instruction to an officer cannot legalize an act which without it would have been a trespass.<sup>9</sup> It must be exercised in strict accordance with the right of appointment of military officers expressly reserved to the States.<sup>10</sup> As Commander-in-Chief he may establish rules and regulations for the government of the forces, or modify, or repeal, or create them anew,<sup>11</sup> which action must be promulgated through the Secretary of War.<sup>12</sup> He may direct the movement of the forces, and employ them in any manner he may deem most effectual.<sup>13</sup> He may declare a blockade of hostile ports in a civil war as well as in a foreign war,<sup>14</sup> or may contract with secret agents to obtain information regarding the enemy's resources and motions, and direct payment therefor out of the contingent fund,<sup>15</sup> and if money is advanced by direction of the head of the proper department the direction of the President will be presumed.<sup>16</sup> In case of insurrection he may accord to the enemy the character of belligerents.<sup>17</sup> See Supplement, *post*, 313.

1 Amer. Ins. Co. v. Canter, 1 Peters, 542; In re Griner, 16 Wis. 423; Dreucker v. Salomon, 21 Wis. 621.

2 Martin v. Mott, 12 Wheat. 20; Prize Cases, 2 Black. 670; McCall v. McDowell, 1 Abb. U. S. 219; Dedy, 233; Dreucker v. Salomon, 21 Wis. 621.

3 Martin v. Mott, 12 Wheat. 20; Luther v. Borden, 7 How. 43; U. S. v. Packages, 11 Am. Law R. 419; Kulp v. Ricketts, 20 Leg. Int. 268; Hodgson v. Millward, Ibid. 164, 348; Ohio v. Bliss, 11 Pitts. L. J. 304; Ex parte Field, 5 Blatchf. 80.

4 Luther v. Borden, 7 How. 43; U. S. v. Cruikshank, 92 U. S. 556.

5 Prize Cases, 2 Black. 668. See Act of February 28th, 1795.

6 In re Kemp, 16 Wis. 353; Ex parte Milligan, 4 Wall. 2.

7 Anonymous, 9 Opin. Att. Gen. 518.

8 Little v. Barreme, 2 Cranch, 170.

9 Little v. Barreme, 2 Cranch, 170.

10 Anonymous, 2 Opin. Att. Gen. 711.



11 *U. S. v. Ellason*, 16 Peters, 291; *U. S. v. Webster*, 2 Ware (Day.) 46; *In re Griner*, 16 Wis. 423.

12 *U. S. v. Ellason*, 16 Peters, 291.

13 *Fleming v. Page*, 9 How. 603.

14 *The Tropic Wind*, 24 Law Rep. 144; *Prize Cases*, 2 Black, 635.

15 *Totten v. U. S.* 92 U. S. 105.

16 *U. S. v. Cutter*, 2 Curt. 617.

17 *Prize Cases*, 2 Black, 635.

**Authority over conquered territory.**—The holding of conquered territory is a mere military occupation until determined by treaty.<sup>1</sup> Such conquests do not enlarge the boundaries of the Union.<sup>2</sup> If ceded by the treaty of peace the acquisition is confirmed, and the territory becomes a part of the nation to which it is annexed.<sup>3</sup> It is a military duty of the President, as Commander-in-Chief, so long as war continues, to provide for the security of persons and property, and for the administration of justice;<sup>4</sup> and to this end he may institute a temporary military government where the laws cannot be executed without it,<sup>5</sup> which will continue to be operative until official information of the ratification of the treaty of peace.<sup>6</sup> This power must be exercised in subordination to the Constitution,<sup>7</sup> but this power does not extend to the repeal or contradiction of existing statutes, or to the making provisions of a legislative nature.<sup>8</sup> He may cause all the laws of the State to be administered and executed, or to be disregarded and set at naught.<sup>9</sup> Where neither he nor Congress dissolve the civil government established in the exercise of provisional rights, the inference is that it is meant to be continued.<sup>10</sup> The President as Commander-in-Chief may establish provisional courts in the territory taken by the national forces, to continue during the war.<sup>11</sup> When a State government is overthrown by rebellion, the President, on obtaining possession of the territory, may appoint a military governor,<sup>12</sup> and may delegate his powers to such provisional governor.<sup>13</sup> A military governor may create courts for the administration of justice,<sup>14</sup> and appoint judges with authority to hold such courts.<sup>15</sup> He may levy and collect taxes under laws not superseded by the conqueror.<sup>16</sup> A provisional government may be established under authority of the United States, and the acts of its officers are valid and obligatory, but private relations are in force, except so far as they are in conflict with the Constitution.<sup>17</sup> The ordinance of such provisional government supersedes institutions of the vanquished country which are incompatible with it,<sup>18</sup> and its authority does not terminate until by direct legislation by

Congress or by the territorial government.<sup>20</sup> The President may adopt means to enable the people of such territory to meet in convention to form a new State government,<sup>21</sup> and may exclude particular persons from voting for such delegates.<sup>22</sup>

- 1 American Ins. Co. v. Canter, 1 Peters, 542.
- 2 Fleming v. Page, 9 How. 603.
- 3 Amer. Ins. Co. v. Canter, 1 Peters, 542; Leitensdorfer v. Webb, 20 How. 176.
- 4 The Grape Shot, 9 Wall. 129.
- 5 Griffin v. Wilcox, 21 Ind. 370.
- 6 Cross v. Harrison, 16 How. 164.
- 7 Scott v. Billgerry, 40 Miss. 119.
- 8 Anonymous, 6 Op. Atty-Gen. 10.
- 9 Scott v. Billgerry, 40 Miss. 119.
- 10 Cross v. Harrison, 16 How. 164.
- 11 The Grapeshot, 9 Wall. 129; Kimball v. Taylor, 2 Woods, 37; Armistead v. State, 43 Ala. 340; Powell v. Boon, 43 Ala. 469; Burk v. Tregre, 22 La. An. 629.
- 12 Rutledge v. Fogg, 3 Cold. 554; Texas v. White, 7 Wall. 700.
- 13 Scott v. Billgerry, 40 Miss. 119.
- 14 Scott v. Billgerry, 40 Miss. 119; Mechanics' and T. Bank v. Union Bank, 22 Wall. 276.
- 15 Pennywit v. Eaton, 15 Wall. 332; Mechanics' Bank v. Union Bank, 22 Wall. 276.
- 16 Rutledge v. Fogg, 3 Cold. 554.
- 17 Armistead v. State, 43 Ala. 340; Powell v. Boon, 43 Ala. 459.
- 18 Leitensdorfer v. Webb, 20 How. 177.
- 19 Leitensdorfer v. Webb, 20 How. 176.
- 20 Leitensdorfer v. Webb, 20 How. 176.
- 21 Ex parte Hughes, Phill. N. C. 57.
- 22 Ex parte Hughes, Phill. N. C. 57.

**Martial law** is the law of force applied where civil law is suspended by force. It is the war power of the President, and all he possesses independently of the civil law.<sup>1</sup> It exists only in case of necessity<sup>2</sup>—such a necessity as effectually closes the courts and deposes the civil administration.<sup>3</sup> It cannot arise from a threatened invasion,<sup>4</sup> but from the fact of the existence or immediately impending force at a given place and time.<sup>5</sup> It is limited to those places within the theater of war, or its vicinity<sup>6</sup>—the precise limits to be determined according to the circumstances of each case.<sup>7</sup> Its duration is limited by its necessity.<sup>8</sup> After the insurrection is suppressed and a provisional government established, and a State constitution adopted, a citizen cannot be tried by court-martial

for an alleged crime.<sup>9</sup> The President during the Rebellion had no power to arrest or imprison any person not subject to military law without process of the court,<sup>10</sup> but a general order of the President authorizing the arrest of persons absenting themselves to avoid the draft was valid.<sup>11</sup> To suspend the writ of *habeas corpus* is a legislative power vested in Congress, and not in the executive.<sup>12</sup> State courts have no authority by *habeas corpus* over persons held under authority of the United States.<sup>13</sup>

1 Griffin v. Wilcox, 21 Ind. 370.

2 Ex parte Eagan, 5 Blatchf. 319.

3 Ex parte Milligan, 4 Wall. 2; Johnson v. Jones, 44 Ill. 142; Skeen v. Monkeimer, 21 Ind. 1; Griffin v. Wilcox, 21 Ind. 370; Johnson v. Jones, 44 Ill. 157; In re Kemp, 16 Wis. 359.

4 Ex parte Milligan, 4 Wall. 2.

5 Griffin v. Wilcox, 21 Ind. 370.

6 Ex parte Milligan, 4 Wall. 2; Jones v. Seward, 40 Barb. 563; In re Kemp, 16 Wis. 359.

7 In re Kemp, 16 Wis. 359.

8 In re Milligan, 4 Wall. 2.

9 Ex parte Eagan, 5 Blatchf. 319.

10 Jones v. Seward, 40 Barb. 563.

11 Allen v. Colby, 47 N. H. 544.

12 In re Kemp, 16 Wis. 359.

13 Tarble's Case, 13 Wall. 397.

**Power to pardon.**—Pardon is an act of grace from the power intrusted with the execution of the laws, exempting from punishment which the law inflicts.<sup>1</sup> The word "pardon" must be construed with reference to its meaning at the time of the adoption of the Constitution.<sup>2</sup> The power herein granted is not to pardon, but to grant reprieves and pardons,<sup>3</sup> and includes amnesty;<sup>4</sup> but amnesty proceedings did not give back property which had been sold under confiscation acts.<sup>5</sup> The power to grant reprieves and pardons, except in cases of impeachment, is unlimited,<sup>6</sup> and is vested exclusively in the President,<sup>6</sup> and not subject to the interference of Congress,<sup>7</sup> and continues as long as any of the legal consequences of the offense remain.<sup>8</sup> It may be exercised as well before trial as after conviction,<sup>9</sup> or after expiration of part of the sentence,<sup>10</sup> and includes the power to commute the sentence.<sup>11</sup> The power extends to all kinds of pardons known to the law as such,<sup>12</sup> either general, special, or particular, conditional or absolute, or statutory, not necessary in some cases, and in some grantable of course.<sup>12</sup> It may be conditional.<sup>13</sup> This grant of power must be held to carry

with it the power to release from fines, penalties, and forfeitures which accrue from the offense.<sup>14</sup> But the exercise of this power will not defeat legal rights which have become vested;<sup>15</sup> so, a general pardon and amnesty do not entitle one receiving them to the proceeds of property previously condemned and sold under confiscation acts.<sup>16</sup> The power does not embrace the power to relieve from the payment of taxes assessed for violation of the revenue laws,<sup>17</sup> nor to the remission of a forfeiture of a bail-bond.<sup>18</sup> The power extends to cases *ex necessitate* legislative, as where a female, after conviction, is found to be *enceinte*, or when insanity supervenes.<sup>19</sup> A full pardon releases the punishment, and blots out the existence of the guilt.<sup>20</sup> Delivery is essential, and delivery is not complete till acceptance.<sup>21</sup> Until delivery, a pardon, though signed and sealed, may be recalled and canceled by the President granting it or by his successor.<sup>22</sup> The amnesty proclamation included aliens domiciled in the rebel States.<sup>23</sup> See Supplement, *post*, 313.

1 U. S. v. Wilson, 7 Peters, 159.

2 U. S. v. Wilson, 7 Peters, 162; *Calder v. Bull*, 3 Dall. 396; *Cathcart v. Robinson*, 5 Peters, 264; *Watson v. Mercer*, 8 Peters, 75; *Carpenter v. Pennsylvania*, 17 How. 456; U. S. v. Harris, 1 Abb. U. S. 115; *Ex parte Wells*, 18 How. 316; U. S. v. Athens Armory, 2 Abb. U. S. 150.

3 *Ex parte Wells*, 18 How. 316.

4 U. S. v. Klein, 13 Wall. 123.

5 *Semmes v. U. S.* 91 U. S. 21; *Wallach v. Van Renswick*, 92 U. S. 202, explaining *Day v. Micou*, 18 Wall. 156, and *Bigelow v. Forest*, 9 Wall. 339; *Ex parte Garland*, 4 Wall. 380; U. S. v. Klein, 13 Wall. 147; U. S. v. Thomasson, 4 Biss. 340. But it relieved claimants of captured and abandoned property of the necessity of proving adherence to the United States—*Armstrong v. U. S.* 13 Wall. 155; *Pargond v. U. S.* Ibid. 156. See the Addso, 11 Op. Att. Gen. 445.

6 U. S. v. Klein, 13 Wall. 123.

7 *Ex parte Garland*, 4 Wall. 380; U. S. v. Klein, 13 Wall. 147.

8 *Stetler's Case*, Phill. (N. C.) 302.

9 Anonymous, 6 Op. Attorney-General, 20.

10 *Stetler's Case*, Phill. (N. C.) 302.

11 *Ex parte Wells*, 18 How. 307.

12 *Ex parte Wells*, 18 How. 314; *Ex parte Garland*, 4 Wall. 380.

13 *Ex parte Wells*, 18 How. 314; U. S. v. Wilson, 7 Peters, 161; Anonymous, 1 Op. Attorney-General, 341; Anonymous, Ibid. 482; *Case of See-sec-sa-ma*, 5 Ibid. 368; *People v. Potter*, 1 Park. Cr. R. 47; *Flavell's Case*, 8 Watts. & S. 197.

14 *Osborn v. U. S.* 91 U. S. 474; U. S. v. Harris, 1 Abb. U. S. 114; U. S. v. Wilson, 7 Peters, 150; *Ex parte Wells*, 18 How. 307; U. S. v. Lancaster, 4 Wash. C. C. 65; *The Hollen*, 1 Mason, 431; *State v. Farley*, 8 Blatchf. 229; *State v. Simpson*, 1 Bailey, 378; *Matt. of Flourney*, 1 Kelly (Ga.) 606; *State v. McO'Brien*, 21 Mo. 272; *Playford v. Commonwealth*, 4 Pa. St. 144; *State v. Williams*, 1 Nott. & McC. 26; *Ex parte McDonald*, 2

Whart. 440; *Duncan v. Commonwealth*, 4 Serg. & R. 451; *The Titi*, 4 Op. Att.-Gen. 573; *Anon.* 4 Op. Att.-Gen. 317; *Armstrong's Foundry*, 6 Wall. 769.

15 *U. S. v. Lancaster*, 4 Wash. C. C. 64; *U. S. v. Morris*, 10 Wheat. 246; *U. S. v. Wilson*, 7 Peters, 150; *Anonymous*, 4 Op. Attorney-General, 576; *Cases of Drayton and Sears*, 5 *Ibid.* 532, 579; *Hanson's Case*, 6 *Ibid.* 615.

16 *Knote v. U. S.* 6 Amer. L. R. 273. The pardoning power has no authority to decree a repayment of a fine—*Cook v. Middlesex*, 3 Dutch. 437.

17 *U. S. v. Roelle*, 11 Chic. L. N. 19.

18 *Columbian Ins. Co. v. Ashby*, 4 Peters, 144.

19 *Ex parte Wells*, 18 How. 307.

20 *Ex parte Garland*, 4 Wall. 333; *U. S. v. Klein*, 13 Wall. 128; *U. S. v. Padelford*, 9 Wall. 542.

21 *U. S. v. Wilson*, 7 Peters, 150; *In re Callicott*, 8 Blatchf. 89.

22 *In re De Puy*, 3 Ben. 307.

23 *Carlisle v. U. S.* 16 Wall. 143.

*2 He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.*

**A treaty** is in its nature a contract between two nations, to be carried into execution by the sovereign power of the respective parties.<sup>1</sup> It cannot deprive Congress of any part of its legislative power.<sup>2</sup> The power to make treaties includes the power to acquire new territory; and this extends the power of legislation over such new territory.<sup>3</sup> Indians may be made citizens by treaty.<sup>4</sup> An Indian treaty may stipulate that the law prohibiting the sale of spirituous liquors in the ceded territory shall remain in force, although the land lies within the limits of a State.<sup>4</sup> The President is made the only legitimate agent of the Government to open and carry on correspondence with foreign nations in matters concerning the interests of the country or its citizens, and this duty is in his discretion.<sup>5</sup> So, citizens abroad must look to the President for protection.<sup>6</sup> The power to make treaties is plenary.<sup>7</sup> The recognition and enforcement of the principles of public law are the ordinary subject of treaties;<sup>8</sup> but the political rights

of the people of the several States, as such, are not subjects of treaty stipulations.<sup>9</sup> A treaty made by the United States, removing the disability of aliens to inherit, is valid, and within the intent of the Constitution.<sup>10</sup> So, a treaty enabling them to purchase and hold lands in the United States is valid.<sup>11</sup> Congress may create a judicial system by treaty.<sup>12</sup>

1 Foster v. Neilson, 2 Peters, 314.

2 Ware v. Hylton, 3 Dall. 199; Scott v. Sandford, 19 How. 629.

3 Amer. Ins. Co. v. Canter, 1 Peters, 511; Scott v. Sandford, 19 How. 393.

4 U. S. v. Rhodes, 1 Abb. U. S. 43; Amer. Ins. Co. v. Canter, 1 Peters, 511; Cross v. Harrison, 16 How. 164; U. S. v. Lariviere, 23 I. R. Rec. 305.

5 Durand v. Hollins, 4 Blatchf. 451.

6 Durand v. Hollins, 4 Blatchf. 451.

7 Holmes v. Jennison, 14 Peters, 540; U. S. v. Gallons, 93 U. S. 188; People v. Gerke, 5 Cal. 381.

8 People v. Curtis, 50 N. Y. 321.

9 License Cases, 5 How. 504; 13 N. H. 336.

10 People v. Gerke, 5 Cal. 381.

11 Chirac v. Chirac, 2 Wheat. 259.

12 Forbes v. Scannell, 13 Cal. 242.

**Appointment and removal.**—An office is a public charge or employment, and he who performs the duties is an officer,<sup>1</sup> but a man employed under a contract is not necessarily an officer.<sup>2</sup> The mere direction that a thing shall be done does not constitute an office.<sup>3</sup> The appointment and removal of an officer is a necessary incident to executive power.<sup>4</sup> The power of the President to appoint includes the power to remove;<sup>5</sup> so, the President may remove any officer, whether civil or military, unless Congress shall have given some other duration to the office.<sup>6</sup> The power to remove an officer appointed by the President and Senate is vested in the President alone;<sup>7</sup> so, the President may remove a territorial judge,<sup>8</sup> or may strike a military officer from the roll.<sup>9</sup> All officers other than judicial officers hold during pleasure.<sup>10</sup> A removal may be either express, by notification, by order of the President, or implied by appointment of another person to the same office, but notice must be actually received by the person removed.<sup>11</sup> A civil officer may resign at pleasure, and the President cannot compel him to remain, nor is it necessary that the resignation should be received to take effect.<sup>12</sup> "He shall nominate," means to recommend in writing; in this form the advice of the Senate is asked.<sup>13</sup> Nominating and appointing are distinct acts from commissioning.<sup>14</sup> The extension of a term must be by nomina-

tion or new appointment by the President, with the concurrence of the Senate.<sup>15</sup> He may appoint diplomatic agents of any rank at any place or time; <sup>16</sup> he may appoint collectors of taxes and internal duties; <sup>17</sup> but he cannot make a temporary appointment in a recess, if the Senate was in session when or since the the vacancy occurred.<sup>18</sup> Congress cannot by law designate the person to fill an office; <sup>19</sup> the Senate can only affirm or reject the appointment.<sup>20</sup> The successor to an appointee refusing to accept is in the place of the appointee, and not the original holder.<sup>21</sup> The commission is conclusive of the appointment,<sup>22</sup> but until signed the appointment is not fully consummated.<sup>23</sup> Neither the transmission of the commission to the appointee nor an acceptance thereof is necessary to complete his rights.<sup>24</sup> Heads of departments can make appointments only in those cases authorized by law.<sup>25</sup> All officers under the Federal Government, except such as are expressly provided in the Constitution, shall be established by law.<sup>26</sup> All inferior officers, appointed by authority of law, hold their offices at the discretion of the appointing power.<sup>27</sup> The appointment of clerks of courts properly belongs to the courts of law,<sup>28</sup> but Congress may restrict the appointment of a commissioner, although his powers are of a judicial nature.<sup>29</sup> A State magistrate who commits offenders against the laws of the United States, is not within this clause.<sup>30</sup> See *post*, 313.

1 U. S. v. Maurice, 2 Brock. 96.

2 U. S. v. Maurice, 2 Brock. 96.

3 U. S. v. Maurice, 2 Brock. 96.

4 *Ex parte Hennen*, 13 Peters, 213.

5 *Ex parte Hennen*, 13 Peters, 213; *Gratlot v. U. S.* 1 Ct. Cl. 253; *Keenan v. Perry*, 24 Tex. 253.

6 *Gratlot v. U. S.* 1 Ct. Cl. 258.

7 *The Hennen*, 13 Peters, 230; *U. S. v. Avery*, Deady, 204.

8 *The Hennen*, 13 Peters, 213; *Anonymous*, 3 Opin. Att. Gen. 673; *Anonymous*, 5 *Ibid.* 288.

9 *Case of Randolph*, 4 Op. Att. Gen. 1.

10 *Keenan v. Perry*, 24 Tex. 258.

11 *Bowerbank v. Morris*, Wall. Sr. 118; *Ex parte Hennen*, 13 Peters, 230.

12 *U. S. v. Wright*, 1 McLean, 509.

13 *Marbury v. Madison*, 1 Cranch, 137; 7 Op. Att. Gen. 186

14 *Marbury v. Madison*, 1 Cranch, 137.

15 *Case of District Attorney*, 16 Am. Law Reg. 786.

16 *Anonymous*, 7 Op. Att. Gen. 186.

17 *U. S. v. Kirkpatrick*, 9 Wheat. 720.

- 18 Case of District Attorney, 16 Am. Law Reg. 786.
  - 19 U. S. v. Ferreira, 13 How. 40.
  - 20 Anonymous, 3 Op. Att. Gen. 188.
  - 21 Marbury v. Madison, 1 Cranch, 133; U. S. v. Kirkpatrick, 4 Wheat. 234; Johnson v. U. S. 5 Mason, 438; Bo. erbank v. Morris, Wall. Sr. 433.
  - 22 U. S. v. Le Baron, 13 How. 74.
  - 23 Case of Coxe, 4 Op. Att. Gen. 218.
  - 24 Marbury v. Madison, 1 Cranch, 133.
  - 25 U. S. v. Maurice, 2 Brock. 96.
  - 26 U. S. v. Maurice, 2 Brock. 96.
  - 27 Ex parte Heanen, 13 Peters, 230; U. S. v. Avery, Doady, 204.
  - 28 Ex parte Honnen, 13 Peters, 230; In re Shipping Commissioner of N. Y. 13 Blatchf. 346.
  - 29 Ex parte Robinson, 6 McLean, 355.
  - 30 Ex parte Gist, 26 Ala. 156.
- See Supplement, post, 313.

*3 The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*

**This power** is not confined to vacancies which may happen in offices created by law.<sup>1</sup> The commission of an officer appointed during the recess, and afterwards nominated and rejected, continues in force till the end of the next session.<sup>2</sup> If the Senate concur it is a new appointment, and a new bond will be required.<sup>3</sup>

1 U. S. v. Maurice, 2 Brock. 96.

2 Hill's Case, 2 Opin. Att. Gen. 336; Tyson's Case, 4 Ibid. 30.

3 U. S. v. Kirkpatrick, 9 Wheat. 733.

### SECTION 3.

*Messages. Reception of Ambassadors, etc. Commissioning officers.*

**Sec. 3.** *<sup>1</sup> He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.*



He shall take care that the laws be faithfully executed as they are expounded and adjudged by the co-ordinate branch of the Government to which that duty is assigned,<sup>1</sup> to the extent of the defensive means placed in his hands;<sup>2</sup> but only by such means as the Constitution and laws themselves have given him power to employ;<sup>3</sup> and in this he cannot be enjoined by the Supreme Court,<sup>4</sup> his discretionary power being beyond judicial control.<sup>5</sup> Under this power the executive ought to order suits in all cases when the laws are infringed and the rights of government invaded.<sup>6</sup> The President has no power to dispense with or forbid the execution of any law,<sup>7</sup> nor can he be restrained from carrying into effect an act of Congress alleged to be unconstitutional.<sup>8</sup> In case of revolution or dismemberment of a nation the judiciary cannot take notice of any new government or sovereignty until recognized by the political department.<sup>9</sup> Commissioning and appointing are distinct powers.<sup>10</sup>

1 *Ex parte Merryman*, Taney, 246.

2 Anonymous, 9 Opin. Att. Gen. 524.

3 *In re Kemp*, 16 Wis. 359.

4 *Mississippi v. Johnson*, 4 Wall. 438.

5 *Marbury v. Madison*, 1 Cranch, 137; *Kendall v. Stockton*, 12 Peters, 527; *Prize Cases*, 2 Black, 635; *State v. Southern Pac. R. R.* 24 Tex. 177.

6 *State v. Delesdernier*, 7 Tex. 65.

7 *Kendall v. U. S.* 12 Peters, 524; 5 Cranch C. C. 163.

8 *Mississippi v. Johnson*, 4 Wall. 475.

9 *U. S. v. Palmer*, 3 Wheat. 634; *Hays v. Gelston*, 3 Wheat. 323; *Rose v. Hunely*, 4 Cranch, 441; *The Divina Pastora*, 4 Wheat. 52; *Nuestra Senora de la Caridad*, 4 Wheat. 497; *Prize Cases*, 2 Black, 635; *Luther v. Borden*, 7 How. 1.

10 *Marbury v. Madison*, 1 Cranch, 151.

#### SECTION 4.

##### *Removal of officers on impeachment.*

**Sec. 4.** <sup>1</sup> *The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

**Civil officers.**—A Senator or member of Congress is not such an officer,<sup>1</sup> but United States Circuit and District Judges are such.<sup>2</sup>

<sup>1</sup> *Blount's Trial*, 102.

<sup>2</sup> *Peck's Trial*; 2 *Chase's Trials*, 137.

## ARTICLE III.

## JUDICIAL DEPARTMENT.

## SECTION 1.

*Supreme and inferior Courts. Term of office and compensation of Judges.*

**Sec. 1.** <sup>1</sup> *The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.*

**Power of Congress.**— Congress cannot confer any part of the judicial power upon an executive officer.<sup>1</sup> Congress cannot give jurisdiction or require services of any officer of a State government.<sup>2</sup> Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself,<sup>3</sup> nor vest any portion of the jurisdiction of the United States in State courts.<sup>4</sup> A State court cannot exercise jurisdiction conferred upon it by Congress.<sup>5</sup> Congress cannot enforce jurisdiction on a State court,<sup>6</sup> nor compel a State court to exert jurisdiction,<sup>7</sup> nor can Congress give jurisdiction, or require service of any officer of a State government as such,<sup>8</sup> nor confer jurisdiction on a military commission.<sup>9</sup> This clause does not apply to or prohibit the establishment of military courts in the insurrectionary States.<sup>10</sup> Congress may authorize any United States court to perform any act which the Constitution does not require to be performed in a different manner.<sup>11</sup> See *post*, 314.

1 *Beatty v. U. S.* 1 Dev. 231.

2 *Ex parte Pool*, 2 Va. Cas. 276; *Prigg v. Pennsylvania*, 16 Peters, 539.

3 *U. S. v. Ames*, 1 Wood. & M. 89; *The British Prisoners*, 1 Wood. & M. 66; *Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169; *Ex parte Knowles*, 5 Cal. 300; *Davison v. Chanplin*, 7 Conn. 244; *Ely v. Peck*, 7 Conn. 239; *U. S. v. Lathrop*, 17 Johns. 4; *State v. McBride*, Rice, 400; *Jackson v. Rose*, 2 Va. Cas. 34.

4 *Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; *Stearns v. U. S.* 2 Paine, 300; *Ex parte Knowles*, 5 Cal. 300; *Ely v. Peck*, 7 Conn. 239; *Davison v. Chanplin*, 7 Conn. 244; *U. S. v. Lathrop*, 17 Johns. 4; *State v. McBride*, Rice, 400; *Jackson v. Rose*, 2 Va. Cas. 34.

5 *Ex parte Knowles*, 5 Cal. 300.

6 *Stearns v. U. S. 2 Paine, 300; Ex parte Stephens, 70 Mass. 559; Miss. Riv. Tel. Co. v. First Nat. Bank, 7 Ch. L. N. 158; The British Prisoners, 1 Wood. & M. 66.*

7 *Stearns v. U. S. 2 Paine, 300; Mississippi Riv. Tel. Co. v. First Nat. Bank, 7 Ch. L. N. 158; Ex parte Stephens, 70 Mass. 559.*

8 *Prigg v. Commonwealth, 16 Peters, 539; Ex parte Pool, 2 Va. Cas. 276.*

9 *Ex parte Milligan, 4 Wall. 121.*

10 Territorial Courts—see Art. 4, Sec. 3, Subd. 2.

11 *Ex parte Gist, 26 Ala. 156; Ex parte Pool, Va. Cas. 276.*

**Judicial power.**—The Constitution defines the limits of the judicial power, but Congress prescribes how much of it is to be exercised by the Federal courts.<sup>1</sup> Judicial power means that power with which courts are clothed for the purpose of the trial and determination of causes<sup>2</sup>—the power conferred to render a judgment or decree.<sup>3</sup> It is not sufficient to bring a matter under the judicial power that it involves the exercise of judgment upon law and facts.<sup>4</sup> The power to hear and pass upon the validity of a claim in an *ex parte* proceeding is not a judicial power.<sup>5</sup> A provision requiring an assessor to impose a certain penalty if he shall find a return false does not confer judicial power;<sup>6</sup> but administrative duties, the performance of which involves an inquiry into the existence of facts, and the application of them to the rules of law, is, in an enlarged sense, a judicial act, as the adjustment of balances and auditing of accounts.<sup>7</sup> Judicial power is never exercised for the purpose of giving effect to the will of the judge, but always of the will of the legislature, or of the law,<sup>8</sup> and must regard the Constitution as paramount.<sup>9</sup> The powers not bestowed upon the Federal courts by legislative provisions remain dormant until some law shall call them into action by designating the particular tribunal which shall be authorized to exercise them.<sup>10</sup> The distribution of powers is regulated and governed by the laws by which they are constituted.<sup>11</sup> The object of this provision was to establish a judiciary of the United States as a department of the Government<sup>12</sup> which cannot interfere with the political department.<sup>13</sup> Neither the executive nor legislative department can be restricted by the judicial, though the acts of both, when performed, are, in proper cases, subject to its cognizance.<sup>14</sup> The condition of peace or war, public or civil, must be determined by the political department, and not the judicial.<sup>15</sup> Whether a foreign country has become an independent State is a question for the treaty-making power, and cannot be decided by the judiciary.<sup>16</sup> There is nothing in the Constitution which prevents a ministerial officer, or person by

law directed, to do an act necessary to bring the accused before the court possessing judicial power of determining his guilt or innocence.<sup>17</sup> The General Government has full authority to appoint and commission all courts, magistrates, and officers to carry out its laws.<sup>18</sup> See *post*, 314.

1 *Turner v. Bank of N. A.* 4 Dall. 10; *McIntyre v. Wood*, 7 Cranch, 506; *Kendall v. U. S.* 12 Peters, 616; *Cary v. Curtis*, 3 How. 245; *Clarke v. City of Jonesville*, 4 Amer. L. Reg. 533.

2 *U. S. v. Arredondo*, 6 Peters, 691; *Banton v. Wilson*, 4 Tex. 400; *Ex parte Gist*, 26 Ala. 156.

3 *Rhode Island v. Massachusetts*, 12 Peters, 657.

4 *U. S. v. Ferreira*, 13 How. 40; *Murray v. Hoboken &c. Co.* 18 How. 272; *Ex parte Gist*, 26 Ala. 156.

5 *U. S. v. Ferreira*, 13 How. 40; *U. S. v. Todd*, 13 How. 52; *Humphreys v. U. S.* 1 Dev. 204.

6 *Doll v. Evans*, 15 Int. Rev. Rec. 143.

7 *Murray v. Hoboken &c. Co.* 18 How. 272.

8 *Osborn v. Bank of U. S.* 9 Wheat. 818.

9 *Marbury v. Madison*, 1 Cranch, 173; *Cohens v. Virginia*, 6 Wheat. 414.

10 *Bank of U. S. v. Roberts*, 4 Conn. 323; *Bank of U. S. v. Northumberland Bank*, 4 Con. 333.

11 *Smith v. Jackson*, 1 Paine, 453; *Moffat v. Soey*, 2 Paine, 103; *Shute v. Davis*, Peters C. C. 431.

12 *Chisholm v. Georgia*, 2 Dall. 419; *Osborne v. Bank of U. S.* 9 Wheat. 818.

13 *Georgia v. Stanton*, 6 Wall. 50; *Loan Asso. v. Topeka*, 20 Wall. 639.

14 *Mississippi v. Johnson*, 4 Wall. 500, reviewing *Marbury v. Madison*, 1 Cranch, 137; *Kendall v. Stokes*, 12 Peters, 527.

15 *U. S. v. Packages*, 11 Am. Law Reg. 419.

16 *Kennett v. Chambers*, 14 How. 38; *Gelston v. Hoyt*, 3 Wall. 246; *Rose v. Himely*, 4 Cranch, 241.

17 *Prigg v. Comm.* 16 Peters, 539; *Ableman v. Booth*, 21 How. 503; *Ex parte Martin*, 2 Paine, 348; *Ex parte Gist*, 26 Ala. 156; *Ex parte Pool*, 2 Va. Co. 276.

18 *Ex parte Stephens*, 70 Mass. 559

**Jurisdiction.**—The jurisdiction of the Supreme Court is pointed out in the Constitution.<sup>1</sup> Its original jurisdiction exists only in cases of ambassadors, etc., and where a State is a party.<sup>2</sup> Its appellate power is to be defined by Congress.<sup>3</sup> It has no power to review by certiorari proceedings of a military commission.<sup>4</sup> The vesting of judicial power is imperative.<sup>5</sup> The power to establish courts and confer jurisdiction is unlimited.<sup>6</sup> Neither the legislative nor executive branches can assign any duties but such as are properly judicial, and to be performed in a judicial manner.<sup>7</sup> Congress may say how much and what shall vest in one inferior court and what in another.<sup>8</sup> An inferior court is one whose judgment can be

reversed on appeal.<sup>9</sup> Their jurisdiction depends exclusively on the Constitution and the terms of statutes passed in pursuance thereof,<sup>10</sup> or by treaty.<sup>11</sup> The United States courts can exercise only that jurisdiction conferred on them by Congress.<sup>12</sup> They cannot exercise common-law jurisdiction in criminal cases,<sup>13</sup> nor proceed by information in criminal cases unless the power is granted by Congress.<sup>14</sup> They are of limited jurisdiction, but not inferior, and can exercise no jurisdiction which is not expressly granted or conferred by necessary implication,<sup>15</sup> as the power to punish for contempt.<sup>16</sup> Their respective jurisdictions must be defined by Congress,<sup>17</sup> and cannot be enlarged or restricted by State laws.<sup>18</sup> The Federal courts have the right to determine their own jurisdiction.<sup>19</sup> Congress may consent to a second trial of a claim against the United States, although a judgment thereon has been rendered for the Government.<sup>20</sup> Congress has power to invest inferior courts with power to issue writs of mandamus,<sup>21</sup> but it cannot empower a commissioner to commit a person for an alleged contempt.<sup>22</sup> The Federal courts cannot apply the writ of *habeas corpus* to one in jail unless confined under and by authority of the United States;<sup>23</sup> and State courts have no authority to issue the writ within the limits of the sovereignty of the United States.<sup>24</sup> Federal courts have the power to issue writs only when necessary in aid of their jurisdiction in a case pending.<sup>25</sup> Congress may make provision for the appointment of a board of land commissioners to settle private land claims.<sup>26</sup>

1 *Smith v. Jackson*, 1 Paine, 453.

2 *Martin v. Hunter*, 1 Wheat. 304.

3 *Holmes v. Jennison*, 14 Peters, 540; *Decatur v. Paulding*, 14 Peters, 612.

4 *Ex parte Vallandigham*, 1 Wall. 243.

5 *Martin v. Hunter*, 1 Wheat. 328; *Anderson v. Dunn*, 6 Wheat. 214.

6 *Mayor v. Cooper*, 6 Wall. 251.

7 *Hayburn's Case*, 2 Dall. 409; *U. S. v. Ferreira*, 13 How. 40; *Doll v. Evans*, 15 Int. Rev. Rec. 143.

8 *U. S. v. New Bedford Bridge*, 1 Wood. & M. 437.

9 *Nugent v. State*, 18 Ala. 52.

10 *Mossman v. Higgenson*, 4 Dall. 12; *Hodgson v. Bowerbank*, 5 Cranch, 203; *Bank of United States v. Devaux*, *Ibid.* 61; *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *Livingston v. Jefferson*, 1 Brock. 203; *U. S. v. Drenner*, *Hemp.* 320; *U. S. v. Alberti*, *Ibid.* 444.

11 *U. S. v. New Bedford Bridge*, 1 Wood. & M. 437; *The British Prisoners*, 1 Wood. & M. 66; *Smith v. Jackson*, 1 Paine, 453.

12 *Ex parte Cabrera*, 1 Wash. C. C. 235; *Magill v. Parsons*, 4 Conn. 325.

13 *Ex parte Bollman*, 4 Cranch, 75; *U. S. v. Hudson*, 7 Cranch, 32; *U. S. v. Coolidge*, 1 Wheat. 415; 1 Gall. 488; *U. S. v. Bevens*, 3 Wheat. 330. *Contra*, *U. S. v. Ravara*, 2 Dall. 297; *U. S. v. Worrall*, 2 Dall. 384.

14 *U. S. v. Joe*, 4 Chic. L. N. 105.

15 *Turner v. Bank of North America*, 4 Dall. 9; *U. S. v. Ta-wan-ga-ca*, Hemp. 304.

16 *Matt. of Meador*, 1 Abb. U. S. 324; *U. S. v. Hudson*, 7 Cranch, 32.

17 *Osborn v. Bank of United States*, 9 Wheat. 738; *Turner v. Bank of North America*, 4 Dall. 10; *McIntyre v. Wood*, 7 Cranch, 506; *Kendall v. United States*, 12 Peters, 616; *Cary v. Curtis*, 3 How. 245; *Sheldon v. Sill*, 8 How. 448.

18 *Livingston v. Jefferson*, 1 Brock. 203; *U. S. v. Drennan*, Hemp. 320; *Greely v. Townsend*, 25 Cal. 604.

19 *U. S. v. Peters*, 5 Cranch, 115; *U. S. v. Booth*, 21 How. 506; *Freeman v. Howe*, 24 How. 459.

20 *Nock v. U. S.* 2 Ct. Cl. 451.

21 *Kendall v. U. S.* 12 Peters, 524.

22 *Ex parte Doll*, 7 Phila. 595.

23 *Ex parte Des Rochers*, McAll. 68.

24 *Ableman v. Booth*, 21 How. 506.

25 *Ex parte Everts*, 7 Am. Law R. 79, overruling *U. S. v. Williamson*, 4 *Ibid.* 11.

26 *U. S. v. Ritchie*, 17 How. 525.

**Territorial courts.**—Congress may define the jurisdiction of territorial courts, or delegate the authority to the territorial government.<sup>1</sup> The jurisdiction with which territorial courts are invested is not a part of that judicial power defined in this article, but is conferred in the execution of those general powers which Congress possesses over the Territories.<sup>2</sup> Does not apply to the abnormal condition of conquered territory, nor permit establishment of courts in insurrectionary districts.<sup>3</sup> The President had power during the Civil War to establish provisional courts, as an incident to the military occupation of States which were the seat of war;<sup>4</sup> but such courts could not decide cases of prize of war as ordinary courts of admiralty.<sup>5</sup> On admitting a Territory into the Union, if Congress fails to provide for cases pending in the supreme court, it may do so by a subsequent act.<sup>6</sup> See *post*, 314.

1 *Leitensdorfer v. Webb*, 20 How. 176.

2 *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *Stacy v. Abbot*, 1 Am. L. T. 84. And see *Benner v. Porter*, 9 How. 244.

3 *Mecha. Bank v. Union Bank*, 22 Wall. 276; *The Grapeshot*, 9 Wall. 132.

4 *The Grapeshot*, 9 Wall. 132; *Leitensdorfer v. Webb*, 20 How. 176.

5 *Jecker v. Montgomery*, 13 How. 515.

6 *Freeborn v. Smith*, 2 Wall. 160.

**Authority of State courts.**—The jurisdiction of State courts is not taken away except as to cases where such jurisdiction would be incompatible with the powers granted to the United States.<sup>1</sup> Where Federal courts have paramount jurisdiction, State courts are expressly prohibited from taking cognizance;<sup>2</sup> so, a State statute authorizing proceedings *in rem* for causes in admiralty is unconstitutional.<sup>3</sup> Congress cannot confer jurisdiction on a State tribunal.<sup>4</sup> The jurisdiction of the State is co-extensive with the territory,<sup>5</sup> but a State legislature cannot confer jurisdiction upon Federal courts, or prescribe the means or mode of its exercise.<sup>6</sup> No part of the criminal jurisdiction can be delegated to State tribunals,<sup>7</sup> but a crime not made an offense by an act of Congress is cognizable in a State court.<sup>8</sup> So, State courts may punish for counterfeiting under a State law, unless exclusive jurisdiction is vested in the Federal courts.<sup>9</sup> A State court has jurisdiction to punish the forgery of a land warrant, where it has not been made a crime by act of Congress.<sup>10</sup> State courts may entertain an action to recover a penalty for breach of a Federal statute.<sup>11</sup> A State magistrate may commit a prisoner to be delivered over for prosecution to the United States.<sup>12</sup>

1 *Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 16; *Teal v. Felton*, 12 How. 284; *State v. Randall*, 2 Ark. 89; *Delafield v. State*, 2 Hill, 159; *U. S. v. Lathrop*, 17 Johns. 4; *Jackson v. Rose*, 2 Va. Cas. 34; *Clafin v. Houseman*, 93 U. S. 130.

2 *In re Brinkman*, 7 Bank. Reg. 423; *Slocum v. Mayberry*, 2 Wheat. 1; *Osborn v. Bank of U. S.*, 9 Wheat. 733; *U. S. v. Peters*, 5 Cranch, 115; *Duncan v. Dirst*, 1 How. 391; *McNutt v. Bland*, 2 How. 16; *Bank of Augusta v. Earle*, 13 Peters, 500.

3 *Crawford v. The Caroline Reed*, 42 Cal. 467; *In re Brinkman*, 7 Bank. Reg. 423; *Bird v. The Josephine*, 39 N. Y. 10; *Brookman v. Hamill*, 43 N. Y. 554; *The Belfast*, 7 Wall. 624, overruling *Richardson v. Cleveland*, 5 Port. 251; *Mouroe v. Brady*, 7 Ala. 59; *The Farmer v. McCraw*, 31 Ala. 65; *The Belfast*, 41 Ala. 50.

4 *Huber v. Relly*, 53 Pa. St. 112.

5 *U. S. v. Bevans*, 3 Wheat. 333; *Scott v. Sandford*, 19 How. 610.

6 *Greely v. Townsend*, 25 Cal. 604.

7 *Martin v. Hunter*, 1 Wheat. 304; *State v. Wells*, 2 Hill, S. C. 637; *Huber v. Relly*, 53 Pa. St. 112; *State v. McBride*, Rice, 400; *Commonwealth v. Feely*, 1 Va. Cas. 321.

8 *State v. Buchanan*, 5 Har. & J. 317.

9 *White v. Commonwealth*, 4 Binn. 413; *State v. Randall*, 2 Ark. 89; *State v. Tutt*, 2 Bailey, 44.

10 *Commonwealth v. Schaffer*, 4 Dall. App. 26.

11 *Clafin v. Houseman*, 93 U. S. 130; *Stearns v. U. S.* 2 Paine, 300; *Buckwalter v. U. S.* 11 Serg. & R. 193. But see *Ely v. Peck*, 7 Conn. 239;

*Davidson v. Champlin*, 7 Conn. 244; *Haney v. Sharp*, 1 Dana, 442; *U. S. v. Lathrop*, 17 Johns. 4; *Jackson v. Rose*, 2 Va. Cas. 34.

12 *Prigg v. Commonwealth*, 16 Peters, 539; *Ex parte Gist*, 26 Ala. 156; *Ex parte Smith*, 5 Cowen 273; *Ex parte Martin*, 2 Paine, 343; *Ex parte Pool*, 2 Va. Cas. 276.

**Removal of causes.**—Congress may transfer a suit from one inferior tribunal to another.<sup>1</sup> It may also provide for the removal of causes from State to Federal courts.<sup>2</sup> This power is only given by implication—it is the indirect means by which Federal courts acquire jurisdiction.<sup>3</sup> A case may be removed from a State to a Federal court where it arises under the Constitution and laws of the United States, as well as where it arises between citizens of different States.<sup>4</sup> Congress may determine at what time its power may be invoked, and at what stage of the proceedings a trial may be removed to the Federal courts.<sup>5</sup> No State can take away the privilege conferred upon citizens of other States to sue in the Federal courts, by providing a special remedy in its own courts.<sup>6</sup> Parties cannot by agreement oust jurisdiction in the Federal judiciary.<sup>7</sup> A statute requiring an agreement from a foreign corporation not to remove a cause, is void:<sup>8</sup> but if a license to transact business in a State is made to depend on the condition that the corporation shall not remove any case from a State to a Federal court, the State may revoke it if such removal is made.<sup>9</sup>

1 *Stuart v. Laird*, 1 Cranch, 299.

2 *Martin v. Hunter*, 1 Wheat. 304; *Mayor v. Cooper*, 6 Wall. 247; *Railroad Co. v. Whitton*, 13 Wall. 270; *Murray v. Patric*, 5 Blatchf. 343; *Fisk v. N. P. R. R. Co.* 6 Blatchf. 362; *Clark v. Dick*, 1 Dill. 8; *Johnson v. Monell*, Woolw. 330; *McCormick v. Humphrey*, 27 Ind. 144; *Tod v. Fairfield*, 15 Ohio St. 377; *Hodgson v. Millward*, 3 Grant, 412; *Kulp v. Ricketts*, 3 Grant, 420; *Greely v. Townsend*, 25 Cal. 604.

3 *Railroad Co. v. Whitton*, 13 Wall. 270; *Martin v. Hunter*, 1 Wheat. 304.

4 *Kulp v. Ricketts*, 3 Grant, 420.

5 *Gaines v. Fuentes*, 92 U. S. 10.

6 *Mason v. Doom Comp.* 3 Wall. Jr. 252.

7 *Davis v. Packard*, 6 Peters, 41; 7 *Ibid.* 276; *Ducat v. Chicago*, 19 Wall. 415; *Cobb v. N. E. Ins. Co.* 6 Gray, 192; *Hobbs v. Manhattan Ins. Co.* 56 Mc. 421.

8 *Morse v. Ins. Co.* 20 Wall. 445; 30 Wis. 436; *Railroad Co. v. Pierce*, 27 Ohio St. 155; *Doyle v. Continental Ins. Co.* 54 U. S. 535; *Hartford F. Ins. Co. v. Doyle*, 6 Bliss. 463. But see *Cont. Ins. Co. v. Kasey*, 13 A. L. J. 311; *N. Y. Life Ins. Co. v. Best*, 23 Ohio St. 105.

9 *State v. Doyle*, 40 Wis. 175; *Doyle v. Continental Ins. Co.* 15 A. L. J. 267. But see *Hartford F. Ins. Co. v. Doyle*, 6 Bliss. 461.



**Judges, tenure of office.**—Congress cannot limit the tenure of judicial offices, or diminish the compensation, or alter the stated time for payment.<sup>1</sup> Judges of courts established by Congress must be appointed to hold office during good behavior.<sup>2</sup> The fees allowed to justices of the peace in the District of Columbia cannot be diminished during their continuance in office.<sup>3</sup> Territorial courts being erected in the exercise of the general sovereignty of the United States over territory it may own, their judges may be appointed for brief terms.<sup>4</sup> This clause prohibits the imposition of a tax on the salary of a judge.<sup>5</sup> Judges cannot be required to perform any but judicial functions.<sup>6</sup>

1 *Martin v. Hunter*, 1 Wheat. 304.

2 *Hayburn's Case*, 2 Dall. 410, note; *U. S. v. Ferreira*, 13 How. 49; *U. S. v. Todd*, 13 How. 52.

3 *U. S. v. More*, 3 Cranch, 160, note.

4 *Amer. Ins. Co. v. Canter*, 1 Peters, 546.

5 *Commonwealth v. Mann*, 5 Watts & S. 415.

6 *Hayburn's Case*, 2 Dall. 410, note; *U. S. v. Todd*, 13 How. 52, note; *U. S. v. Ferreira*, 13 How. 49.

## SECTION 2.

### *Judicial powers.*

1. Jurisdiction of Courts.
2. Of Supreme Court, original and appellate.
3. Jury trials, place of trial.

**Sec. 2.** <sup>1</sup> *The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.*

**Jurisdiction.**—“Shall extend” is used in an imperative sense, and imports an absolute grant of power.<sup>1</sup> There are three classes of cases enumerated. In the latter class as to controversies, Congress may qualify the jurisdiction, either original or appellate.<sup>2</sup> How jurisdiction shall be acquired, whether original or appellate, and the mode of procedure, are left to the wisdom of the legisla-

ture;<sup>3</sup> so, Congress may give the Federal courts original jurisdiction in any case to which appellate jurisdiction extends;<sup>4</sup> and may lawfully provide for suits, at the option of the parties, on all controversies between citizens of the different States.<sup>5</sup> When a question within the judicial power becomes an ingredient of the cause, Congress may give the Federal courts jurisdiction.<sup>6</sup> The questions which the case involves must determine its character.<sup>7</sup> Congress may provide that a national bank may sue and be sued in the national courts.<sup>8</sup> The judicial power is the instrument provided in administering security to an officer acting in discharge of his duty.<sup>9</sup> It covers every legislative act of Congress.<sup>10</sup> It is the final arbiter of constitutional construction,<sup>11</sup> and may receive from the legislature the power to construe every constitutional law.<sup>12</sup> For the judicial power to extend to a violation of the Constitution, it must be "a case in law or in equity" in which a right under such law is asserted in a court of justice.<sup>13</sup> Seeking protection under a law is a case arising under that law.<sup>14</sup> The judicial power is unavoidably in some cases exclusive of all State authority, and in others may be made so at the election of the legislative body.<sup>15</sup> The jurisdiction of the Federal courts in the first three classes of cases in this section is exclusive;<sup>16</sup> so as to questions arising on treaties, when not political questions.<sup>17</sup> Congress may grant exclusive jurisdiction in United States courts over suits arising under the laws of the United States.<sup>18</sup> See Supplement, *post*, 315.

1 *Martin v. Hunter*, 1 Wheat. 304.

2 *Martin v. Hunter*, 1 Wheat. 304; *The Moses Taylor*, 4 Wall. 411.

3 *Mayor v. Cooper*, 6 Wall. 247.

4 *Osborn v. Bank of U. S.* 9 Wheat. 738.

5 *Gaines v. Fuentes*, 92 U. S. 10.

6 *Osborn v. Bank of U. S.* 9 Wheat. 738; *Mayor v. Cooper*, 6 Wall. 247.

7 *Osborn v. Bank of U. S.* 9 Wheat. 738.

8 *Osborn v. Bank of U. S.* 9 Wheat. 733; *Bank of U. S. v. Northumberland Bank*, 4 Wash. C. C. 103; 4 Conn. 333; *Magill v. Parsons*, 4 Conn. 317; *Bank of U. S. v. Roberts*, 4 Conn. 323.

9 *Hodgson v. Millward*, 3 Grant, 412.

10 *Ableman v. Booth*, 21 How. 506; 3 Wis. 1; *Mayor v. Cooper*, 6 Wall. 247.

11 *Vandorne's Lessee v. Dorrance*, 2 Dall. 304; *Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264; *Ableman v. Booth*, 21 How. 505; 3 Wis. 1.

12 *Osborne v. Bank of U. S.* 9 Wheat. 733; *Bank of U. S. v. Roberts*, 4 Conn. 323; *Hodgson v. Millward*, 3 Grant, 412.

13 *Cohens v. Virginia*, 6 Wheat. 264.

14 *Hodgson v. Millward*, 3 Grant. 412; *Kulp v. Ricketts*, *Ibid.* 420.

15 *Martin v. Hunter*, 1 Wheat. 304; *The Moses Taylor*, 4 Wall. 411.

16 *State v. McBride*, Rice, 400.

17 *Wilson v. Wall*, 6 Wall. 83; *Ex parte Leon*, 1 Edm. Sel. Cas. 301; *U. S. v. Lathrop*, 17 Johns. 9; *U. S. v. Campbell*, 6 Hall L. J. 113; *Haney v. Sharp*, 1 Dana, 442.

18 *Fox v. Ohio*, 5 How. 410; *Voorhees v. Frisble*, 8 Bank. Reg. 154.

**Extent of judicial power.**—A case in law or equity consists of the right of one party as well as of the other, and it arises when its correct decision depends on the construction of the Constitution or laws of the United States.<sup>1</sup> It is a suit instituted according to the regular course of judicial procedure;<sup>2</sup> it is limited to such as are between parties, or are of a judicial nature,<sup>3</sup> and does not include political questions.<sup>4</sup> When the subject-matter of a controversy is political, it is beyond the domain of the judiciary, as where it involves the existence *de jure* of the Government, or the legality of some act or proceeding purely governmental.<sup>5</sup> Cases at law include suits in which legal rights are to be ascertained and determined as distinguished from those where equitable rights are administered,<sup>6</sup> or where the proceeding is in admiralty;<sup>7</sup> but a case can only be considered when the subject-matter is submitted in the form prescribed by law,<sup>8</sup> and the record must show that the Constitution or some law or treaty is drawn in question.<sup>9</sup> The United States courts have no jurisdiction of offenses at common law.<sup>10</sup> Suits in which relief is sought according to the principles and practice of equity jurisdiction are "cases in equity."<sup>11</sup> The true test is whether there is a plain, adequate, and complete remedy at law in the same court.<sup>12</sup> It extends over cases in State courts, and over statutes whether passed by a State legislature or by Congress, and which are claimed to be in contravention of the Constitution of the United States,<sup>13</sup> but not to statutes claimed to be void under a State constitution.<sup>14</sup> To bring an act within the control of the judiciary, it must be clearly subversive of the Constitution.<sup>15</sup> The objection must not be doubtful,<sup>16</sup> but a clear violation of the Constitution.<sup>17</sup> The question as to the title to property conferred by treaty is a political question, and its decision by the political department is conclusive on the judiciary;<sup>18</sup> so, the protection of Indians in their possessions,<sup>19</sup> and as to State boundaries,<sup>20</sup> and as to political treaties,<sup>21</sup> and as to the recognition of foreign governments, are political questions.<sup>22</sup> The recognition of the existence of a government is conclusive of its public character.<sup>23</sup> The jurisdiction extends to all cases affecting ambassadors, etc., although they are not

parties to the record.<sup>24</sup> If the right of property in the subject-matter is given or created by an act of Congress, it is within the judicial power of the United States;<sup>25</sup> but State courts may entertain jurisdiction of cases arising under the laws of the United States upon principles of comity, which authorize the courts of every civilized State to administer law and justice to suitors.<sup>26</sup> Congress may give the circuit courts original jurisdiction in any case to which the appellate jurisdiction attaches.<sup>27</sup> See *post*, 315.

1 *Cohens v. Virginia*, 6 Wheat. 379; *U. S. v. Williams*, 4 Cranch C. C. 392; *Osborn v. Bank of United States*, 9 Wheat. 733; *Jones v. Seward*, 41 Barb. 272; *Ex parte Milligan*, 4 Wall. 114.

2 *Marbury v. Madison*, 1 Cranch. 138; *Owings v. Norwood*, 5 Cranch, 348; *Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264.

3 *Luther v. Borden*, 7 How. 1; *U. S. v. Ferreira*, 13 How. 40.

4 *Luther v. Borden*, 7 How. 1.

5 *Georgia v. Stanton*, 6 Wall. 50.

6 *Parsons v. Bedford*, 3 Peters, 447; *Fenn v. Holme*, 21 How. 496; And see *Strother v. Lucas*, 6 Peters, 763; *Parish v. Ellis*, 16 Peters, 453; *Bennett v. Butterworth*, 11 How. 669; *Sherbourne v. De Cordova*, 24 How. 423.

7 *Parsons v. Bedford*, 3 Peters, 447; *Robinson v. Campbell*, 3 Wheat. 212.

8 *Robinson v. Campbell*, 3 Wheat. 212; *Osborn v. Bank of United States*, 9 Wheat. 738; *Parsons v. Bedford*, 3 Peters, 433.

9 *Lawler v. Walker*, 14 How. 147; *Mills v. Brown*, 16 Peters, 525; *Railroad Co. v. Rock*, 4 Wall. 180; *Ryan v. Thomas*, 4 Wall. 603.

10 *Ex parte Bollman*, 4 Cranch, 75; *Turner v. Bank of N. A.* 4 Dall. 10; *U. S. v. Lancaster*, 2 McLean, 431; *Kitchen v. Strawbridge*, 1 Wash. C. C. 84; *U. S. v. New Bedford Bridge*, 1 Wood. & M. 401.

11 *Robinson v. Campbell*, 3 Wheat. 212; *U. S. v. Howland*, 4 Wheat. 108; *Lorman v. Clark*, 2 McLean, 568; *Gordon v. Hobart*, 2 Sum. 401; *Pratt v. Northam*, 5 Mason, 95; *Cropper v. Coburn*, 2 Curt. 433.

12 *U. S. v. Howland*, 4 Wheat. 103; *Boyce v. Grundy*, 3 Peters, 215; *Gaines v. Chew*, 2 How. 619; *Williams v. Benedict*, 8 How. 107.

13 *Calder v. Bull*, 3 Dall. 399; *Marbury v. Madison*, 1 Cranch, 137; *Dartmouth College v. Woodward*, 4 Wheat. 625.

14 *Calder v. Bull*, 3 Dall. 392.

15 *Turner v. Althaus*, 6 Neb. 54.

16 *U. S. v. Jackson*, 3 Sawy. 62; *People v. Brinkerhoff*, 68 N. Y. 259.

17 *C. C. R. R. Co. v. Twenty-third St. R. R. Co.* 54 How. Pr. 168; *Bennington v. Park*, 50 Vt. 178.

18 *Foster v. Neilson*, 2 Peters, 309; *U. S. v. Arredondo*, 6 Peters, 711; *Garcia v. Lee*, 12 Peters, 520; *Williamson v. Suffolk Ins. Co.* 13 Peters, 441; *Luther v. Borden*, 7 How. 56.

19 *Cherokee Nation v. Georgia*, 5 Peters, 20.

20 *Rhode Island v. Massachusetts*, 12 Peters, 657; *Garcia v. Lee*, *Ibid.* 520.

21 *Luther v. Borden*, 7 How. 56.

22 *Williamson v. Suffolk Ins. Co.* 13 Peters, 419; *Cherokee Na. v. Georgia*, 5 Peters, 20; *Rose v. Himely*, 4 Cranch, 241; *U. S. v. Palmer*, 3 Wheat. 610; *Gelston v. Hoyt*, *Ibid.* 246; *The Divina Pastora*, 4 Wheat. 64.

23 *Du Pont v. Pichou*, 4 Dall. 321; *U. S. v. Ortega*, 4 Wash. C. C. 531.

24 *Osborn v. Bank of U. S.* 9 Wheat. 738; *U. S. v. Ortega*, 11 Wheat. 467; *U. S. v. Ravara*, 2 Dall. 297.

25 *Bank of U. S. v. Roberts*, 4 Conn. 323.

26 *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 163; *Clafin v. Houseman*, 93 U. S. 130; *Bank of U. S. v. Roberts*, 4 Conn. 323; *Jackson v. Rose*, 2 Va. Cas. 34.

27 *U. S. v. Bevans*, 3 Wheat. 336; *Osborn v. Bank of U. S.* 9 Wheat. 821; *Jones v. Seward*, 41 Barb. 272.

**As to persons.**—The judicial power extends to controversies to which the United States shall be a party, embracing civil suits, but not to suits against the executive to prevent the enforcement of reconstruction laws.<sup>1</sup> It extends to suits where a State is a party,<sup>2</sup> but only when it is a party to the record,<sup>3</sup> and process is served on the chief executive and attorney-general of the State;<sup>4</sup> or when the governor is sued in his official capacity.<sup>5</sup> It extends to controversies between two or more States,<sup>6</sup> including suits to settle disputed boundaries,<sup>7</sup> and it only applies to States that are members of the Union, and to public bodies owing obedience and conformity to its constitution and laws,<sup>8</sup> Indian nations not being deemed States.<sup>9</sup> It extends to controversies between a State and citizens of other States, but this does not include a suit by the citizens against the State.<sup>10</sup> It extends to controversies between citizens of different States;<sup>11</sup> the situation of the parties, and not their characters, determines the jurisdiction.<sup>12</sup> Citizenship, as to jurisdiction, means only residence,<sup>13</sup> and for this purpose a corporation is deemed a citizen of the State which charters it.<sup>14</sup> This clause does not embrace cases where one of the parties is a citizen of a Territory, or of the District of Columbia.<sup>15</sup> Controversies between citizens claiming lands under grants of different States are within the jurisdiction, notwithstanding one of the States, at the time of the first grant, was a part of the other.<sup>16</sup> It is the grant which passes the legal title and authorizes jurisdiction.<sup>17</sup> This clause gives jurisdiction where foreign States or individual foreigners are parties,<sup>18</sup> but an Indian tribe is not a foreign nation within this provision.<sup>19</sup> The controversy, in order to give jurisdiction, must be one in which a citizen of a State and an alien are parties,<sup>20</sup> or a nominal citizen suing for the use of an alien.<sup>21</sup> So, a foreign corporation is an alien.<sup>22</sup> The opposing party must be a citizen, and it must so appear on the record.<sup>23</sup> At common law, an

alien cannot maintain a real action;<sup>24</sup> the disability is personal.<sup>25</sup> This section does not include controversies between people of a State as to the formation or change of their constitution.<sup>26</sup>

1 *Mississippi v. Johnson*, 4 Wall. 498; *Georgia v. Stanton*, 6 Wall. 50.

2 *N. Y. v. Conn.* 4 Dall. 1; *N. J. v. N. Y.* 5 Peters, 290; *Georgia v. Brailsford*, 2 Dall. 402, 415; *Oswald v. N. Y.* 2 Dall. 415; *Chisholm v. Georgia*, 2 Dall. 419; *Grayson v. Va.* 3 Dall. 320; *Mass. v. R. I.* 12 Peters, 755; *Gov. of Ga. v. Madrazo*, 1 Peters, 122; *Luther v. Borden*, 7 How. 55; *Mowrey v. Indiana & C. R. R. Co.* 4 Biss. 80.

3 *Osborn v. Bank of U. S.* 9 Wheat. 738; *N. Y. v. Conn.* 4 Dall. 3; *Fowler v. Lindsay*, 3 Dall. 411; *U. S. v. Peters*, 5 Cranch, 115.

4 *Georgia v. Brailsford*, 2 Dall. 402; 3 Dall. 1; *Oswald v. New York*, 2 Dall. 415; *Chisholm v. Ga.* 2 Dall. 419; *N. J. v. N. Y.* 5 Peters, 284; *Grayson v. Virginia*, 3 Dall. 320; *Kentucky v. Ohio*, 24 How. 96.

5 *Kentucky v. Ohio*, 24 How. 97; *Gov. of Georgia v. Madrazo*, 1 Peters, 110.

6 *Osborn v. Bank of U. S.* 9 Wheat. 738; *Dundas v. Bowler*, 3 McLean, 204.

7 *R. I. v. Mass.* 12 Peters, 657; *Ala. v. Ga.* 23 How. 510; *Brainard v. Williams*, 4 McLean, 122.

8 *Scott v. Jones*, 5 How. 377.

9 *Cherokee Nation v. Ga.* 5 Peters, 16.

10 *Cohens v. Va.* 6 Wheat. 406. See Post, XIth Amend., Note.

11 *Ohio & Miss. R. R. Co. v. Wheeler*, 1 Black, 286. But see *Hope Ins. Co. v. Boardman*, 5 Cranch, 57.

12 *Connolly v. Taylor*, 2 Peters, 556.

13 *Gassies v. Ballou*, 6 Peters, 761; *Shelton v. Tiffin*, 6 How. 163; *Lessee of Cooper v. Galbraith*, 3 Wash. C. C. 546; *Lessee of Butler v. Farnsworth*, 4 *Ibid.* 101.

14 *Hope Ins. Co. v. Boardman*, 5 Cranch, 57; *U. S. v. Planters' Bank*, 9 Wheat. 410; *Louisville & C. R. R. Co. v. Letson*, 2 How. 437; *Cumberland & C. Bank v. Slocumb*, 14 Peters, 60; *Marshall v. Balt. & C. R. R. Co.* 16 How. 314; *Wheeden v. Camden & C. R. R. Co.* 4 Am. L. R. 296; *Bank of U. S. v. Devaux*, 5 Cranch, 61.

15 *Hepburn v. Ellzey*, 2 Cranch, 445; *New Orleans v. Winter*, 1 Wheat. 91; *Gassies v. Ballou*, 6 Peters, 761; *Hartshorne v. Wright*, Peters C. C. 64; *Scott v. Jones*, 5 How. 376; *Barney v. Baltimore*, 6 Wall. 287; *Texas v. White*, 7 Wall. 737; *Railroad Co. v. Harris*, 12 Wall. 86.

16 *Town of Pawlet v. Clark*, 9 Cranch, 292.

17 *Colson v. Lewis*, 2 Wheat. 377.

18 *Chappedelaine v. Dechenaux*, 4 Cranch, 303; *Brown v. Strode*, 5 Cranch, 303.

19 *Cherokee Nation v. Ga.* 5 Peters, 1; *Worcester v. Ga.* 6 Peters, 619.

20 *Hepburn v. Ellzey*, 2 Cranch, 445; *New Orleans v. Winter*, 1 Wheat. 91; *Gassies v. Ballou*, 6 Peters, 761; *Brown v. Reese*, 8 Peters, 112; *Picquet v. Swan*, 4 Mason, 443; 5 *Ibid.* 35; *Case v. Clarke*, 5 Mason, 70; *Wilson v. City Bank*, 5 Bank. Reg. 270; *Catlett v. Pac. Ins. Co.* 1 Paine, 524; *Lessee of Cooper v. Galbraith*, 3 Wash. C. C. 546; *Prentiss v. Brennan*, 2 Blatchf. 164; *Chappedelaine v. Dechenaux*, 4 Cranch, 306.

21 *Brown v. Strode*, 5 Cranch, 303.

22 *Society for Prop. of Gosp. v. N. H.* 8 Wheat. 464; *Comml. &c. Bank v. Slocomb*, 14 Peters, 60.

23 *Jackson v. Twentymen*, 2 Peters, 136; *Baird v. Byrne*, 3 Wall. Jr. 1.

24 *Jones v. McMasters*, 20 How. 20; *Lanfear v. Hunley*, 4 Wall. 209; *McDonogh v. Millandon*, 3 How. 693; *Semple v. Hager*, 4 Wall. 433; *Barges v. Hogg*, 1 Hayw. 435; *Orser v. Hoag*, 3 Hill, 79; *White v. Sabariego*, 28 Tex. 246.

25 *Kemp v. Kennedy*, 5 Cranch, 173; *Peters C. C.* 40.

26 *Luther v. Borden*, 7 How. 55; *Mass. v. R. I.* 12 Peters, 755.

**Admiralty and maritime.**—The Constitution confers not only admiralty, but all “maritime” jurisdiction.<sup>1</sup> “Maritime” was added to guard against a narrow interpretation of the word “admiralty.”<sup>2</sup> These words refer to the general system of maritime law familiar to this country when the Constitution was adopted,<sup>3</sup> and regard must be had to our legal history, Constitution, legislation, usages, and adjudications.<sup>4</sup> The grant was not intended to be limited to cases of admiralty jurisdiction in England when the Constitution was adopted.<sup>5</sup> The maritime law is a part of the common law.<sup>6</sup> The term belongs to the law of nations as well as to domestic and municipal law.<sup>7</sup> The jurisdiction is entirely distinct from the power of Congress to regulate commerce.<sup>8</sup> It makes the judicial co-extensive with the legislative power,<sup>9</sup> and covers not merely the cognizance of the case, but the jurisprudence and principles by which it is administered.<sup>10</sup> The whole subject belongs exclusively to the General Government,<sup>11</sup> and jurisdiction in the Federal courts is exclusive.<sup>12</sup> Jurisdiction in admiralty is expressly granted by the Constitution,<sup>13</sup> but its exercise depends on congressional legislation,<sup>14</sup> and Congress may limit or control it,<sup>15</sup> or modify the practice.<sup>16</sup> The term includes jurisdiction of all things done upon and relating to the sea, and all transactions relating to commerce and navigation, and to damages or injuries upon the high seas,<sup>17</sup> and to the navigable lakes and rivers of the United States,<sup>18</sup> and to inland navigable waters, although not affected by the ebb and flow of the tide;<sup>19</sup> but the grant does not extend to waters ceded to the several States, nor to the general jurisdiction over the same;<sup>20</sup> so, the power to regulate the fisheries was not surrendered by the grant of admiralty and maritime jurisdiction.<sup>21</sup> See Supplement, *post*, 315.

1 *De Lovio v. Bolt*, 2 Gall. 398. And see *The Seneca*, Gilp. 28; *The Huntress*, 2 Ware (Dav.) 82; *The S. C. Ives*, Newb. 205.

2 *Fretz v. Bull*, 12 How. 466; *The Hine v. Trevor*, 4 Wall. 555, 561; *The Moses Taylor*, 4 Wall. 411.

3 *N. J. S. N. Co. v. Merch. Bank*, 6 How. 344; *Waring v. Clarke*, 5 How. 441; *The Genessee Chief v. Fitzhugh*, 12 How. 443; *The Lottawanna*, 21 Wall. 558; *The Huntress*, 2 Ware (Dav.) 83.

- 4 The St. Lawrence, 1 Black, 522; The Lottawanna, 21 Wall. 576.
- 5 New Jersey Co. v. Merch. Bank, 6 How. 344; Waring v. Clarke, 5 How. 441; De Lovio v. Bolt, 2 Gall. 393; The Seneca, Gilp. 10, 34; The Gold Hunter, Blatchf. & H. 300; Steel v. Thatcher, 1 Ware, 91; The Huntress, 2 Ware (Dav.) 82; The S. C. Ives, Newb. 205; The Volunteer, 1 Sum. 551.
- 6 Thompson v. The Catharina, 1 Pet. Adm. 104.
- 7 The Huntress, 2 Ware (Dav.) 82.
- 8 The Genessee Chief v. Fitzhugh, 12 How. 443; The Belfast, 7 Wall. 624; The Sarah Jane, 1 Low. 203.
- 9 The Huntress, 2 Ware (Dav.) 82.
- 10 The Chusan, 2 Story, 455.
- 11 The Chusan, 2 Story, 455.
- 12 Martin v. Hunter, 1 Wheat. 304; Amer. Ins. Co. v. Canter, 1 Peters, 511; The Moses Taylor, 4 Wall. 411; The Hine v. Trevor, 4 Wall. 555; The Wave, Blatchf. & H. 252.
- 13 Carpenter v. The Emma Johnson, 1 Cliff. 633.
- 14 U. S. v. Bevens, 3 Wheat. 337; Jackson v. The Magnolia, 20 How. 296.
- 15 Carpenter v. The Emma Johnson, 1 Cliff. 633.
- 16 The Genessee Chief v. Fitzhugh, 12 How. 443.
- 17 De Lovio v. Bolt, 2 Gall. 398; The Young America, Newb. 101.
- 18 The Genessee Chief v. Fitzhugh, 12 How. 451.
- 19 The Genessee Chief v. Fitzhugh, 12 How. 451.
- 20 U. S. v. Bevens, 3 Wheat. 337; Smith v. Maryland, 18 How. 71; The Wave, 2 Paine, 131; Blatchf. & H. 235; Genessee Chief v. Fitzhugh, 12 How. 443.
- 21 Smith v. Maryland, 18 How. 71; Bennett v. Boggs, Bald. 60; Corfield v. Coryell, 4 Wash. C. C. 371.

**Maritime contracts.**—Admiralty and maritime jurisdiction embraces all maritime contracts, all torts committed in its jurisdiction,<sup>1</sup> and all suits for liens of materialmen and for services.<sup>2</sup> States cannot create maritime liens nor give their courts jurisdiction over them.<sup>3</sup> It extends over contracts, though the voyage is within the State and only on waters of the State;<sup>4</sup> and over torts on navigable waters, though committed within the body of a county;<sup>5</sup> and over seizures for breach of revenue laws;<sup>6</sup> or for engaging in the Rebellion;<sup>7</sup> and for all crimes and offenses against the laws of the United States.<sup>8</sup> In cases purely dependent on locality it is limited to the sea, and to tide-waters as far as the tide flows, and up to high-water mark.<sup>9</sup> It includes captures made *jure belli* upon certain waters, and all questions of prize, crimes, and offenses upon the same; civil acts, torts, and injuries committed thereon, collisions, illegal seizures, depredations on property, and salvage, and other services.<sup>10</sup> States cannot by local legislation enlarge or limit the jurisdiction



of the Federal Courts;<sup>11</sup> nor confer jurisdiction on them in cases not cognizable in admiralty.<sup>12</sup>

1 *New York v. Connecticut*, 4 Dall. 1; *Waring v. Clarke*, 5 How. 489; *Gloucester Ins. Co. v. Younger*, 2 Curt. 322; *De Lovio v. Boit*, 2 Gall. 398.

2 *The General Smith*, 4 Wheat. 433; *Gardner v. New Jersey*, 1 Peters, 227; *Stevens v. The Sandwich*, *Ibid.* 233; *Davis v. A New Brig*, Gilp. 473; *Wick v. The Samuel Strong*, 6 McLean, 537; *The Robert Fulton*, 1 Palme, 630; *Zane v. The President*, 4 Wash. C. C. 453.

3 *The Belfast*, 7 Wall. 624.

4 *The Belfast*, 7 Wall. 624; *The Mary Washington*, 1 Abb. U. S. 1; *The Leonard*, 3 Ben. 233; *Carpenter v. The Emma Johnson*, 1 Cliff. 633; *The Volunteer*, 1 Ch. L. N. 145; *The Sarah Jane*, 1 Low. 20. But see, *contra*, *Maguire v. Card*, 21 How. 243; *Allen v. Newberry*, 21 How. 244; *New Jersey Co. v. Merchants' Bank*, 6 How. 344; *The Troy*, 4 Blatchf. 355.

5 *Roberts v. Skolfield*, 8 Am. Law Reg. 156.

6 *U. S. v. La Vengeance*, 3 Dall. 297; *U. S. v. The Sally*, 2 Cranch, 406; *N. J. S. N. Co. v. Merchants' Bank*, 6 How. 344.

7 *Mrs. Alexander's Cotton*, 2 Wall. 404.

8 *Cornfield v. Coryell*, 4 Wash. C. C. 371; *U. S. v. Bevans*, 3 Wheat. 337.

9 *U. S. v. Coombs*, 12 Peters, 72.

10 *Martin v. Hunter*, 1 Wheat. 304; *U. S. v. McGill*, 4 Dall. 426; 1 Wash. C. C. 463; *The Plymouth*, 3 Wall. 20; *Thomas v. Lane*, 2 Sum. 9; *Plummer v. Webb*, 4 Mason, 330; *The Huntress*, 2 Ware (Dav.) 85.

11 *The Belfast*, 7 Wall. 624; *The Chusan*, 2 Story, 455.

12 *Crawford v. The Caroline Reed*, 42 Cal. 463.

*2 In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.*

**Original jurisdiction.**—The first clause of this provision declares the extent of the judicial power,<sup>1</sup> which Congress cannot abridge or extend;<sup>2</sup> nor can Congress confer original jurisdiction in cases other than those enumerated.<sup>3</sup> The jurisdiction of the Supreme Court is both original and exclusive,<sup>4</sup> and co-extensive with the judicial power,<sup>5</sup> but special and limited, confined to particular cases, controversies, and parties.<sup>6</sup> It has no jurisdiction over questions of a political character.<sup>7</sup> In the absence of legislation by Congress, the Court may prescribe the mode and form of proceedings, so as to attain the object for which jurisdiction was given.<sup>8</sup> It is left to Congress to organize the Supreme Court, to define its powers consistently with the Constitution, and to distribute the resi-

due between it and the inferior courts.<sup>9</sup> Although the Constitution vests in the Supreme Court jurisdiction in suits affecting ambassadors, ministers, and consuls, Congress may vest a concurrent jurisdiction in such inferior courts as may be established.<sup>10</sup> A State court has no jurisdiction over an offense committed by a consul;<sup>11</sup> but an indictment against a private person for an assault upon an ambassador or public minister is not a case affecting such minister.<sup>12</sup> The original jurisdiction, in cases where a State is a party, refers to cases where jurisdiction might be exercised by reason of the character of the party in any suit in a Federal court,<sup>13</sup> and it must be a case where the State is nominally a party, and substantially affected,<sup>14</sup> a party to the record,<sup>15</sup> or if it has a direct interest in the controversy,<sup>16</sup> where disputes and controversies arise between the respective States,<sup>17</sup> as on questions of boundaries.<sup>18</sup> A State may bring an original suit against a citizen of another State, but not against one of her own,<sup>19</sup> though a State may be authorized to sue in the inferior courts.<sup>20</sup> Where the State is a party, it may be represented by the governor.<sup>21</sup> The Supreme Court has no jurisdiction in a case where a State is enforcing its penal laws,<sup>22</sup> nor in a proceeding by an alien against a citizen.<sup>23</sup>

1 *Pennsylvania v. Quicksilver Co.* 10 Wall. 553; *DeLafield v. State*, 2 Hill, 153.

2 *Marbury v. Madison*, 1 Cranch. 137; *Ex parte Vallandigham*, 1 Wall. 252; *Ex parte Yerger*, 8 Wall. 98.

3 *Matt. of Metzger*, 5 How. 176; *In re Kaine*, 14 How. 103; 3 Blatchf. 1.

4 *U. S. v. Ortega*, 11 Wheat. 467; *Houston v. Moore*, 5 Wheat. 1; *Marbury v. Madison*, 1 Cranch, 137; *Osborn v. Bank of U. S.* 9 Wheat. 738. But see *U. S. v. Ravara*, 2 Dall. 297; *Chisholm v. Georgia*, 2 Dall. 419; *The Exchange v. McFaddin*, 7 Cranch, 116.

5 *Osborn v. Bank of U. S.* 9 Wheat. 738.

6 *Rhode Island v. Massachusetts*, 12 Peters, 657.

7 *Cherokee Nation v. Georgia*, 5 Peters, 1; *State v. Stanton*, 6 Wall. 50.

8 *Florida v. Georgia*, 17 How. 478.

9 *Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264; *Osborn v. Bank of U. S.* 9 Wheat. 738; *Chisholm v. Georgia*, 2 Dall. 419; *Rhode Island v. Massachusetts*, 12 Peters, 657.

10 *U. S. v. Ravara*, 2 Dall. 297; *St. Luke's Hospital v. Barclay*, 3 Blatchf. 259; *Graham v. Stucken*, 4 Blatchf. 50; *Gittings v. Crawford*, Taney, 1. But see *Davis v. Packard*, 6 Peters, 41; *Mannhardt v. Souderstrom*, 1 Binn. 138; *Griffin v. Dominguez*, 2 Duer, 656; *Commonwealth v. Kosloff*, 5 Serg. & R. 545.

11 *Commonwealth v. Kosloff*, 5 Serg. & R. 545.

12 *U. S. v. Ortega*, 11 Wheat. 467.

13 *Cohens v. Virginia*, 6 Wheat. 264.

14 *Fowler v. Lindsey*, 3 Dall. 411; *New Jersey v. New York*, 5 Peters, 287; *Cherokee Na. v. Georgia*, 5 Peters, 1; *Ex parte Madrazo*, 7 Peters, 627; *Rhode Island v. Massachusetts*, 12 Peters, 657; *Pennsylvania v. Wheeling &c. Br.* 18 How. 421.

15 *Bank of U. S. v. Planters' Bank*, 9 Wheat. 904.

16 *Pennsylvania v. Wheeling &c. Br.* 9 How. 647; 13 How. 518.

17 *Chancely v. Bailey*, 37 Ga. 532.

18 *Rhode Island v. Massachusetts*, 12 Peters, 657; *Florida v. Georgia*, 17 How. 478; *Virginia v. West Virginia*, 11 Wall. 39; *New York v. Connecticut*, 4 Dall. 1.

19 *Pennsylvania v. Quicksilver Co.* 10 Wall. 553; *Cohens v. Virginia*, 6 Wheat. 264.

20 *State v. Atkins*, 35 Ga. 315. *Contra*, *State v. Trustees*, 5 Bank Reg. 466; 1 Hughes, 133.

21 *Kentucky v. Dennison*, 24 How. 63.

22 *Cohens v. Virginia*, 6 Wheat. 264.

23 *Ex parte Barry*, 2 How. 65.

**Appellate jurisdiction.**—In every case to which the judicial power extends, and in which original jurisdiction is not given, the Supreme Court may exercise its appellate jurisdiction.<sup>1</sup> Where original jurisdiction is founded on the character of the parties, the judicial power cannot be exercised in its appellate form;<sup>2</sup> but where it is founded on the nature of the controversy the appellate jurisdiction attaches.<sup>3</sup> The essential criterion of appellate jurisdiction is, that it raises and corrects proceedings in a cause already instituted.<sup>4</sup> In prize cases the Supreme Court can exercise appellate jurisdiction only.<sup>5</sup> The appellate power is not limited to any particular courts.<sup>6</sup> It may be exercised over territorial courts,<sup>7</sup> but not without legislation by Congress,<sup>8</sup> or over State courts on questions involving the constitutionality of legal enactments.<sup>9</sup> But it cannot exercise appellate jurisdiction over the Court of Claims,<sup>10</sup> nor can Congress grant appellate jurisdiction on the inferior courts from the decisions of the State courts.<sup>11</sup> The principle on which appellate jurisdiction from State courts is allowed is to grant efficient and just means of self-protection.<sup>12</sup> The Supreme Court jurisdiction over inferior courts is strictly appellate.<sup>13</sup> The jurisdiction on appeal must be conferred by Congress,<sup>14</sup> with such exceptions and under such regulations as Congress may make,<sup>15</sup> and the action of Congress excludes State legislation.<sup>16</sup> All appellate jurisdiction must be exercised in pursuance of positive statutes fully within constitutional grants.<sup>17</sup> The power of the Supreme Court to issue a mandamus is in the exercise of an appellate jurisdiction only.<sup>18</sup> So as to the writ of *habeas corpus*.<sup>19</sup> The power to award this writ by any court of the United States must be given by

law.<sup>20</sup> It exists in all cases of commitment by the judicial authority of the United States not expressly excepted by Congress.<sup>21</sup> It is only when the proceedings below are entirely void that relief may be given on review by *habeas corpus*.<sup>22</sup> The repeal of an act authorizing appeal in cases of *habeas corpus* does not affect the jurisdiction antecededly exercised.<sup>23</sup> An enactment of the Confederate States enforced as a law of one of the States composing the Confederacy is a statute of such State, as to the jurisdiction of the supreme court over judgments and decrees in State courts.<sup>24</sup>

1 Cohens v. Virginia, 6 Wheat. 264; Marbury v. Madison, 1 Cranch, 137; Ex parte Vallandigham, 1 Wall. 252; Ex parte Yerger, 8 Wall. 98; Martin v. Hunter, 1 Wheat. 304.

2 Osborn v. Bank of United States, 9 Wheat. 738.

3 Martin v. Hunter, 1 Wheat. 304; Cohens v. Virginia, 6 Wheat. 264.

4 Marbury v. Madison, 1 Cranch, 137.

5 The Alicia, 7 Wall. 571.

6 Martin v. Hunter, 1 Wheat. 304; Cohens v. Virginia, 6 Wheat. 264; Dodge v. Woolsey, 18 How. 331; Ableman v. Booth, 21 How. 506; 3 Wis. 1; Ferris v. Coover, 11 Cal. 176; Piqua Bank v. Knoup, 6 Ohio St. 342; 16 How. 369.

7 Benner v. Porter, 9 How. 244; Hunt v. Palao, 4 How. 539; Freeborn v. Smith, 2 Wall. 173.

8 McNulty v. Batty, 10 How. 79.

9 Bridge Prop. v. Hoboken &c. Co. 1 Wall. 116; Furman v. Nichol, 8 Wall. 57; Delmas v. Ins. Co. 14 Wall. 667; Homo Ins. Co. v. Augusta, 93 U. S. 116; Ferris v. Coover, 11 Cal. 176. But see Johnson v. Gordon, 4 Cal. 368.

10 Gordon v. U. S. 2 Wall. 561.

11 Patrie v. Murray, 43 Barb. 323; Wetherbee v. Johnson, 14 Mass. 412.

12 Scott v. Jones, 5 How. 343.

13 Gaines v. Relf, 15 Peters, 17.

14 Barry v. Mercein, 5 How. 119; Ex parte McCardle, 7 Wall. 506; U. S. v. New Bedford Br. 1 Wood. & M. 437; Livingston v. Van Ingen, 9 Johns. 507; Marbury v. Madison, 1 Cranch, 137; Ex parte Bollman, 4 Cranch, 75; U. S. v. Hamilton, 3 Dall. 17; Ex parte Kearney, 7 Wheat. 38; Weston v. Charleston, 2 Peters, 449; Ex parte Crane, 5 Peters, 150.

15 Scott v. Jones, 5 How. 374; Ex parte McCardle, 7 Wall. 506; Ex parte Yerger, 8 Wall. 98; Darousseau v. U. S. 6 Cranch, 313; Ex parte Vallandigham, 1 Wall. 252; U. S. v. Moore, 3 Cranch, 159; Murdock v. Memphis, 20 Wall. 590; Martin v. Hunter, 1 Wheat. 304.

16 Houston v. Moore, 5 Wheat. 1; Prigg v. Commonwealth, 16 Peters, 539.

17 Wixart v. Dauchy, 3 Dall. 321; Clarke v. Bazadone, 1 Cranch, 212; U. S. v. Moore, 3 Cranch, 159; Darousseau v. U. S. 6 Cranch, 307; Ex parte Kearney, 7 Wheat. 38; Ex parte Watkins, 3 Peters, 193.

18 Marbury v. Madison, 1 Cranch, 137; Ex parte Yerger, 8 Wall. 97.

19 Ex parte Bollman, 4 Cranch, 75.

20 Ex parte Bollman, 4 Cranch, 75.

21 Kane's Case, 14 How. 103; Ex parte Yerger, 8 Wall. 99.

22 *Ex parte Parks*, 93 U. S. 18.

23 *Ex parte McCardle*, 7 Wall. 506.

24 *Ford v. Surget*, 97 U. S. 534; *Williams v. Bruffy*, 96 U. S. 176.

*<sup>3</sup> The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.*

**Trial for crimes.**— This applies to proceedings in Federal courts,<sup>1</sup> and is not suspended by the intervention of war.<sup>2</sup> A citizen in civil life in nowise connected with military service cannot be tried by a military commission where courts are open to hear criminal accusations and redress grievances.<sup>3</sup> As soon as it judicially appears of record that the party has pleaded not guilty, an issue has arisen which courts are bound to direct to be tried by a jury.<sup>4</sup> The trial is the examination before a competent tribunal, according to the law of the land.<sup>5</sup> Congress must first make an act a crime, affix the penalty, and declare the court having jurisdiction;<sup>6</sup> and any law dispensing with the requisites to constitute a jury is unconstitutional.<sup>7</sup> A crime committed against the laws of the United States out of the limits of a State is not local, but may be tried at such place as Congress shall designate by law.<sup>8</sup> A statute which provides that a party may be tried by the court on a charge of libel is void, although it gives him a right of appeal to a court where trial may be had by jury.<sup>9</sup> A statute to confiscate the property of a person engaged in rebellion, in any district in which property may be found, is void.<sup>10</sup> A proceeding to annul the license of a pilot for neglect of duty is not a criminal proceeding.<sup>11</sup> See Supplement, *post*, 316.

1 *Murphy v. People*, 2 Cow. 815; *Anderson v. Durin*, 6 Wheat. 215. See Amend. Arts. IV, V, VI.

2 *Ex parte Milligan*, 4 Wall. 123.

3 *Ex parte Milligan*, 4 Wall. 123.

4 *U. S. v. Gilbert*, 2 Sum. 10.

5 *U. S. v. Curtis*, 4 Mason, 232.

6 *U. S. v. Hudson*, 7 Cranch, 32; *U. S. v. Coolidge*, 1 Wheat. 415.

7 *Work v. State*, 2 Ohio St. 236; *State v. Cox*, 3 English, 433.

8 *U. S. v. Dawson*, 15 How. 467. And see *Anderson v. Dunn*, 6 Wheat. 215.

9 *Ex parte Dana*, 7 Ben. 1.

10 *Norris v. Doniphan*, 4 Met. (Ky.) 346.

11 *Low v. Commissioners*, R. M. Charl. 302.

## SECTION 3.

*Treason.*

1. Definition and evidence of.
2. Punishment of.

**Sec. 3.** <sup>1</sup> *Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.*

**Treason.**—The elements which constitute treason are : A combination or conspiracy by which several are united in one common purpose ;<sup>1</sup> the purpose must be to prevent the execution of some public law,<sup>2</sup> and actual force must be employed by such combination<sup>3</sup> to overthrow the Government or coerce its conduct.<sup>4</sup> It is the breach of allegiance, either perpetual or temporary.<sup>5</sup> So, war levied under the pretended authority of the Confederate States is treason.<sup>6</sup> The occupation of a fortress by men in military array to detain it, is treason ;<sup>7</sup> the offense is complete when force is directed to overthrow only certain portions of the country.<sup>8</sup> The delivery of a prisoner to an enemy is treason.<sup>9</sup> When an armed body is mustered in military array for a treasonable purpose, every step taken by any of them is an overt act.<sup>10</sup> Though no man can be convicted of treason who was not present when war was levied,<sup>11</sup> yet the crime may be committed by those not personally present, if they are leagued with the conspirators and perform any part,<sup>12</sup> but the overt act and the intention must concur to constitute the crime.<sup>13</sup> The only compulsion which will excuse one marching with rebels is force on the person and present fear of death.<sup>14</sup> The crime of treason is not to be extended by construction.<sup>15</sup> The conspiracy to levy war and actual levying of war are distinct offenses.<sup>16</sup> So, resistance to the execution of a law must be of a political and not of a private nature.<sup>17</sup> The mere enlistment of men who are not assembled is not a levying of war.<sup>18</sup> Enemies refer to subjects of a foreign power, and not to citizens of a State in rebellion.<sup>19</sup> If a party, being with a squadron, comes peaceably to the shore to procure provisions, it does not constitute an overt act.<sup>20</sup> That two witnesses are required refers to the proof on the trial, and not to proceedings before the grand jury, or to preliminary investigations.<sup>21</sup>

1 In re Bollman, 4 Cranch, 75; Druecker v. Salomon, 21 Wis. 621.

2 Druecker v. Salomon, 21 Wis. 621.

3 U. S. v. Burr, 9 Wheat. 529; 2 Cranch C. C. 379; U. S. v. Mitchell, 2 Dall. 348; U. S. v. Hanway, 2 Wall. J. 139; U. S. v. Hoxie, 1 Paine, 265; U. S. v. Fries, 2 Whart. St. Tr. 482; 3 Dall. 515.

- 4 U. S. v. Greathouse, 2 Abb. U. S. 364.
- 5 U. S. v. Wiltberger, 5 Wheat. 76; 3 Wash. C. C. 515.
- 6 Shortridge v. Macon, Chase, 136.
- 7 U. S. v. Greiner, 4 Phila. 336.
- 8 U. S. v. Greathouse, 2 Abb. U. S. 364.
- 9 U. S. v. Hodges, 2 Wheel. C. C. 477.
- 10 U. S. v. Greiner, 4 Phila. 336.
- 11 U. S. v. Burr, 4 Cranch, 469; 2 Burr's Tri. 401; U. S. v. Wiltberger, 5 Wheat. 76; 3 Wash. C. C. 515.
- 12 In re Bollman, 4 Cranch, 75; U. S. v. Burr, 4 Cranch, 439; Druecker v. Salomon, 21 Wis. 621.
- 13 U. S. v. Fries, 3 Dall. 515; U. S. v. Hodges, 2 Wheel. C. C. 477; U. S. v. Burr, 4 Cranch, 450.
- 14 U. S. v. Greiner, 4 Phila. 336; U. S. v. Hodges, 2 Wheel. C. C. 477.
- 15 In re Bollman, 4 Cranch, 75.
- 16 In re Bollman, 4 Cranch, 75; U. S. v. Mitchell, 2 Dall. 343.
- 17 U. S. v. Hanway, 2 Wall. Jr. 139; U. S. v. Hoxie, 1 Paine, 265; U. S. v. Fries, 3 Dall. 515.
- 18 Ex parte Bollman, 4 Cranch, 75; U. S. v. Burr, 4 Cranch, 469; U. S. v. Hanway, 3 Wall. Jr. 140; People v. Lynch, 1 Johns. 553.
- 19 U. S. v. Greathouse, 2 Abb. U. S. 364; U. S. v. Cheneweth, 4 West L. Mo. 165.
- 20 U. S. v. Pryor, 3 Wash. C. C. 334.
- 21 U. S. v. Hanway, 2 Wall. Jr. 138; U. S. v. Burr, 4 Cranch, 469; 1 Burr. Tri. 196; U. S. v. Greiner, 4 Phila. 336. But see U. S. v. Fries, 2 Whart. St. Tr. 430.

*<sup>2</sup> The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.*

**Punishment.**—Power to punish for treason against the United States is exclusive in Congress.<sup>1</sup> The confiscation act provided against any forfeiture of real estate beyond the life of the offender.<sup>2</sup> All that can be sold under the confiscation act is the right to the property terminating with the life of the person for whose offense it had been seized.<sup>3</sup> Only the life estate is subject to condemnation and sale.<sup>4</sup> This act is a mere exercise of the war power; not a criminal procedure.<sup>5</sup> This provision does not apply to the confiscation of enemies' property, even though guilty of treason.<sup>6</sup>

1 People v. Lynch, 11 Johns. 553.

2 Bigelow v. Forrest, 9 Wall. 350.

3 Bigelow v. Forrest, 9 Wall. 339.

4 Day v. Micon, 13 Wall. 156.

5 Miller v. U. S. 11 Wall. 304.

6 Confiscation Cases, 1 Woods, 221.

## ARTICLE IV.

## STATE RIGHTS.

## SECTION 1.

*Acts and official records of States. Authentication and effect of.*

**Sec. 1.** <sup>1</sup> *Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

**Faith and credit.**—These terms point to the attributes and qualities which judicial proceedings and records shall have as evidence.<sup>1</sup> Records are all acts legislative, executive, judicial, and ministerial, which constitute the public records of the State,<sup>2</sup> and the object of the section is to declare that full faith and credit should be given to such, the manner of authenticating the same, and their effect when properly authenticated;<sup>3</sup> and to this end Congress has full power to legislate as to the effect of judicial proceedings in the courts of the States and Territories.<sup>4</sup> Legislative acts are to be authenticated by the seal of the State,<sup>5</sup> which imports absolute verity.<sup>6</sup> The object of this clause was to preclude judgments from being disregarded in other States, when a proper tribunal with competent jurisdiction had rendered them,<sup>7</sup> but only so far as they have jurisdiction,<sup>8</sup> the record being subject to contradiction as to facts necessary to give jurisdiction,<sup>9</sup> as where judgment was rendered against a citizen of another State not served with process, and who did not voluntarily appear.<sup>10</sup> The Constitution has effected no change in the nature of a judgment,<sup>11</sup> it simply places judgments in another State on a different footing from what are commonly called foreign judgments, as to their force and effect.<sup>12</sup> A judgment in any State is to be regarded as a domestic judgment,<sup>13</sup> but this clause relates only to judgments in civil actions, and not to judgments in criminal prosecutions,<sup>14</sup> nor to decrees in divorce.<sup>15</sup> Supp. 316.

1 *McElmoyle v. Cohen*, 13 Peters, 312; *Carter v. Bennett*, 6 Fla. 214; *Joice v. Scales*, 13 Ga. 725; *Brengle v. McClellan*, 7 Gill & J. 434; *Shelton v. Johnson*, 4 Sneed, 672; *Wilson v. Robertson*, 1 Tenn. 464.

2 *White v. Burnley*, 20 How. 250; *McGrew v. Watrous*, 16 Tex. 509.



3 *Green v. Sarmiento*, 1 Peters C. C. 74; 3 Wash. C. C. 17.

4 *Hughes v. Davis*, 8 Md. 271; *Duvall v. Fearson*, 13 Md. 502. But see *Adams v. Way*, 33 Conn. 419; *Haggin v. Squires*, 2 Bibb, 334; *Seton v. Hanham*, R. M. Charlt. 374.

5 U. S. *v. Johns*, 4 Dall. 412; 1 Wash. C. C. 363; *Craig v. Brown*, Peters C. C. 354.

6 U. S. *v. Johns*, 4 Dall. 416; 1 Wash. C. C. 334; U. S. *v. Amedy*, 11 Wheat. 407.

7 *People v. Dawell*, 25 Mich. 247.

8 *D'Arcy v. Ketchum*, 11 How. 135; *Board of Pub. Wks. v. Columbia College*, 17 Wend. 521.

9 *Thompson v. Whitman*, 13 Wall. 457; *Pennywit v. Foote*, 27 Ohio St. 600.

10 *D'Arcy v. Ketchum*, 11 How. 165.

11 *McElmoyle v. Cohen*, 13 Peters, 312.

12 *Oldens v. Hallet*, 3 N. J. 436; *Gibbons v. Livingston*, 6 Ibid. 233; *Gibbons v. Ogden*, 9 Wheat. 1.

13 *Baxley v. Dinah*, 27 Pa. St. 247.

14 *Commonwealth v. Green*, 17 Mass. 514.

15 *Hood v. State*, 56 Ind. 233; *Sewall v. Sewall*, 122 Mass. 153.

**Effect of judgments.**—The judgment of a State court has the same validity, credit, and effect in any State that it has in the State where rendered,<sup>1</sup> and where jurisdiction attaches it is conclusive as to the merits;<sup>2</sup> but no greater effect can be given than is given in the State where rendered.<sup>3</sup> If a decree is enforceable in the State where rendered, it is enforceable in any other State.<sup>4</sup> The clause does not give validity to a void decree.<sup>5</sup> The records and judicial proceedings to which full faith and credit are to be given are only such as are duly rendered by a competent court, having full jurisdiction,<sup>6</sup> without reference to whether they be superior courts of record or inferior tribunals.<sup>7</sup> The legislature of a State has the constitutional power to require a less amount of proof than is required by the act of Congress.<sup>8</sup> A judgment can only be controverted on the ground of want of jurisdiction.<sup>9</sup> The provision in this section is binding on the States.<sup>10</sup> See *post*, 316.

1 *Westervelt v. Lewis*, 2 McLean, 511; *Warren Manuf. Co. v. Ætna Ins. Co.* 2 Palne, 502; *Hampton v. McConnell*, 3 Wheat. 234; *Mayhew v. Thatcher*, 6 Wheat. 129; *Sarchet v. The Davis*, Crabbe, 185; *Houston v. Dunn*, 13 Tex. 430; *Benton v. Bergot*, 10 Serg. & R. 242; *Green v. Sarmiento*, 3 Wash. C. C. 17; *Bank of Ala. v. Dalton*, 9 How. 520; *Mills v. Duryee*, 7 Cranch, 434; *Whitwell v. Barbier*, 7 Cal. 54.

2 *McElmoyle v. Cohen*, 13 Peters, 312; *Christmas v. Russell*, 5 Wall. 302; *U. S. Bank v. Merchants' Bank*, 7 Gill. 430; *Bissell v. Briggs*, 9 Mass. 462; *Ingram v. Droukard*, 14 Tex. 352.

3 *Public Works v. Columbia College*, 17 Wall. 529; *Suydam v. Barber*, 18 N. Y. 463.

4 *Caldwell v. Carrington*, 9 Peters, 86.

5 *Orden v. Saunders*, 12 Wheat. 213; *Vanuxem v. Hazlehursts*, 4 N. J. 192. And see *Mitchell v. Lenox*, 14 Peters, 49.

6 *Aldrich v. Kenney*, 4 Conn. 330; *Blissell v. Briggs*, 9 Mass. 462.

7 *Taylor v. Barron*, 30 N. H. 73; *Silver Lake Bank v. Harding*, 5 Ohio, 545; *Pelton v. Platner*, 13 Ohio, 209.

8 *Whitwell v. Barbler*, 7 Cal. 54.

9 *Price v. Ward*, 1 Dutch. 225; *Smith v. Smith*, 17 Ill. 482; *Black v. Black*, 4 Brad. 174; *Reed v. Wright*, 2 Iowa. 15; *McLaurine v. Monroe*, 30 Mo. 462; *Wright v. Boynton*, 37 N. H. 9; *Judkins v. Union L. Ins. Co.* Ibid. 470; *Rapo v. Heaton*, 9 Wis. 328.

10 *Livestock &c. Asso. v. Crescent City*, 1 Abb. U. S. 396.

**Power of Congress.**—The authenticity of a judgment and its effect depend upon the law made in pursuance of the Constitution,<sup>1</sup> which declares that Congress may mark out the effect and define the general power given,<sup>2</sup> and to give a conclusive effect to judgments in State courts.<sup>3</sup> The Constitution does not confer the power to give to a judgment all the legal properties, rights, and attributes to which it is entitled by the laws of the State where rendered,<sup>4</sup> nor that the effects and consequences of a litigation shall follow it into other States,<sup>5</sup> nor to extend the local jurisdiction, or the operation of a local decree;<sup>6</sup> so as to judgments in insolvency proceedings.<sup>7</sup> So, a discharge from imprisonment for debt in one State will not prevent an arrest under the laws of another State.<sup>8</sup> So, the probate of a will, being but a decree *in rem*, is confined in its operation to things within the State;<sup>9</sup> but the record in proceedings in bankruptcy is competent evidence.<sup>10</sup> The record of a judgment certified according to law is admissible in evidence in any State; but the legislature of a State has power to require a less amount of proof.<sup>11</sup> So, a State may give the judgment of another State any effect it may think proper, so that it does not derogate from the effect secured by the Constitution and the acts of Congress.<sup>12</sup> Thus, the law of a State may fix different times for barring the remedy in a suit upon a judgment of another State.<sup>13</sup> But where full faith and credit is not given to judicial proceedings of another State, the judgment based thereon will be erroneous.<sup>14</sup>

1 *McElmoyle v. Cohen*, 13 Peters, 312.

2 *Curtis v. Gibbs*, 1 Pen. (N. J.) 405.

3 *Mills v. Duryee*, 7 Cranch, 431; *McElmoyle v. Cohen*, 13 Peters, 312; *Warren Manuf. Co. v. Etna Ins. Co.* 2 Paine, 501; *Green v. Sarmiento*, 1 Peters C. C. 74; 3 Wash. C. C. 17.

4 *Brengle v. McClellan*, 7 Gill & J. 434.

5 *Shelton v. Johnson*, 4 Sneed, 672.

6 *Bowen v. Johnson*, 5 R. L. 112.

7 *McElmoyle v. Cohen*, 13 Peters, 312; *Brengle v. McClellan*, 7 Gill & J. 434; *Cameron v. Wurtz*, 4 McCord, 278; *Harness v. Green*, 20 Mo. 316; *Colt's Estate*, 4 Watts & S. 314.

8 *Joice v. Scales*, 18 Ga. 725.

9 *Darby v. Mayer*, 10 Wheat. 465.

10 *Carr v. Gale*, 3 Wood. & M. 60.

11 *Parke v. Williams*, 7 Cal. 247; *Whitwell v. Barbier*, 7 Cal. 54.

12 *Bissell v. Briggs*, 9 Mass. 462.

13 *McElmoyle v. Cohen*, 13 Peters, 312; *Bacon v. Howard*, 20 How. 22; *Robinson v. Peyton*, 4 Tex. 276.

14 *Green v. Van Buskirk*. 7 Wall. 139.

## SECTION 2.

### *Privileges and immunities of citizens.*

1. Entitled to same alike in every State.
2. Fugitives from justice.
3. Fugitives from servitude.

**Sec. 2.** <sup>1</sup> *The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.*

**Citizens.**—The word “citizens” means citizens of the United States.<sup>1</sup> It imports the same as the word “free-men,” and includes every person who, by birth or naturalization, is or may be qualified to exercise and enjoy all the rights which a native-born inhabitant does or can enjoy.<sup>2</sup> Citizens are all white inhabitants who, born in the colonies, adhered to the cause of independence up to July, 1776.<sup>3</sup> When Congress receives a foreign nation into the Union, its citizens become citizens of the United States.<sup>4</sup> So, all free inhabitants of Texas at the time of its annexation,<sup>5</sup> and all inhabitants under the Treaty of Florida,<sup>6</sup> and all inhabitants of California by the treaty, who remained and adhered to the United States, became citizens.<sup>7</sup> A citizen of the United States is a citizen of the State where he resides.<sup>8</sup> So, a free colored person might be a citizen of the United States.<sup>9</sup> The guaranty applies to people of the United States, whether in the States or Territories.<sup>10</sup> The term applies only to natural persons, members of the body politic owing allegiance to the State, and not to corporations.<sup>11</sup> Birth and allegiance go together, except in case of the child of an ambassador.<sup>12</sup> As to the Indian tribes, a child of a member thereof, though born in the United States, is not a citizen.<sup>13</sup> See Supplement, *post*, 317.

1 *Davis v. Pierce*, 7 Minn. 13.

2 *Douglass v. Stephens*, 1 Del. Ch. 465; *Slaughter-House Cases*, 16 Wall. 129.

3 *Orr v. Hodgson*, 4 Wheat. 453; *Dawson v. Godfrey*, 4 Cranch, 321; *Fairfax v. Hunter*, 7 Cranch, 603; *Inglis v. Sailors' Snug Harb.* 3 Peters, 99; *U. S. v. Ritchie*, 17 How. 538; *Orson v. Hoag*, 3 Hill, 80; *Kelly v. Harrison*, 20 Johns. Cas. 29; *Jackson v. White*, 20 Johns. 313; *Snanks v. Dupont*, 3 Peters, 242.

4 *Sabariego v. McKenney*, 18 How. 240; *Cryer v. Andrews*, 11 Tex. 105.

5 *Calkins v. Cocke*, 14 How. 227.

6 *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *U. S. v. Gratiot*, 14 Peters, 526; *Cross v. Harrison*, 16 How. 189.

7 *Sabariego v. McKenney*, 18 How. 289; *U. S. v. Richie*, 17 How. 538.

8 *Gassies v. Ballou*, 6 Peters, 761; *Smith v. Moody*, 26 Ind. 299.

9 *Smith v. Moody*, 26 Ind. 305. *Contra*, *Pendleton v. Arkansas*, 6 Ark. 509; *Hickland v. Indiana*, 8 Blackf. 365; *Indiana v. Cooper*, 5 Blackf. 253; *Baptiste v. Indiana*, *Ibid.* 283; *Shaw v. Brown*, 35 Miss. 246; *Amy v. Smith*, 1 Litt. 326. But see *post*, Amendment XIV, sec. 1, and note.

10 Anonymous, 6 Op. Att.-Gen. 304.

11 *Bank of U. S. v. Devaux*, 5 Cranch, 61; *Bank of Augusta v. Earle*, 13 Peters, 586; *Slocumb v. Bank of Vicksburg*, 14 Peters, 60; *Louisville R. R. Co. v. Letson*, 2 How. 556; *Paul v. Virginia*, 8 Wall. 180; *Warren Manuf. Co. v. Etna Ins. Co.* 2 Paine, 502. And see *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; *Pensacola Tel. Co. v. West. U. T. Co.* 96 U. S. 1; *People v. Imlay*, 20 Barb. 68; *Phoenix Ins. Co. v. Commonwealth*, 5 Bush, 68; *Slaughter v. Commonwealth*, 13 Gratt. 767; *Ducat v. Chicago*, 10 Wall. 410; 48 Ill. 172; *Louisiana v. Lathrop*, 10 La. An. 398; *Commonwealth v. Milton*, 12 B. Mon. 212; *Patern v. Wright*, 23 N. J. 423; *West. U. T. Co. v. Mayer*, 28 Ohio St. 521; *Fire Dep. v. Helfenstein*, 16 Wis. 142.

12 *Inglis v. Sailors' Snug Harbor*, 3 Peters, 99; *U. S. v. Rhodes*, 1 Abb. U. S. 40; *Lynch v. Clarke*, 1 Sand. Ch. 533; *McKay v. Campbell*, 2 Sawy. 122.

13 *McKay v. Campbell*, 2 Sawy. 122.

**Privileges and immunities.**—These expressions are confined to those privileges and immunities which are in their nature fundamental,<sup>1</sup> such as protection by the Government; the enjoyment of life and liberty; the right to acquire and possess property, and to pursue and obtain happiness and safety, subject to such restraints as the Government may justly prescribe for the general good;<sup>2</sup> the right to pursue a lawful employment in a lawful manner,<sup>3</sup> and to be exempt from any higher taxes or excises than those imposed on its own citizens;<sup>4</sup> such privileges and immunities as belong to general citizenship,<sup>5</sup> including the right to pass freely into and through any State for the purposes of commerce, trade, residence, etc.,<sup>6</sup> the meaning being that no privilege or immunity allowed to the most favored class shall be withheld from citizens of another State,<sup>7</sup> such rights to be determined in view of the particular rights asserted or denied.<sup>8</sup> It does not embrace privileges conferred by the local laws of a State,<sup>9</sup> as the rights of representation and election,<sup>10</sup> or a right peculiar

to some individual or body.<sup>11</sup> The right to institute actions is one of the privileges and immunities of citizens of each State;<sup>12</sup> so, the right to sue out an attachment in another State;<sup>13</sup> so, a citizen of one State may sue a foreigner in another State.<sup>14</sup> Congress cannot grant privileges to citizens of one State over those of another, and cannot give a State the power to do so.<sup>15</sup> The right to sell liquor is not a privilege or immunity of citizenship,<sup>16</sup> nor the right to practice a profession.<sup>17</sup> One may be a citizen without having all the privileges and immunities of citizenship.<sup>18</sup> See Supplement, *post*. 317.

1 *Corfield v. Coryell*, 4 Wash. C. C. 380.

2 *Slaughter-House Cases*, 16 Wall. 76; *Ward v. Maryland*, 12 Wall. 430; *Corfield v. Coryell*, 4 Wash. C. C. 371; *Bennett v. Boggs*, Bald. 60; *Commonwealth v. Milton*, 12 B. Mon. 212; *Campbell v. Morris*, 3 Har. & McH. 535; *Ward v. Morris*, 4 Ibid. 330; *State v. Medbury*, 3 R. I. 142; *Live Stock Co. v. Crescent City*, 1 Abb. U. S. 398.

3 *Slaughter-House Cases*, 16 Wall. 106.

4 *Ward v. Maryland*, 12 Wall. 430; *Wiley v. Parmer*, 14 Ala. 627; *Oliver v. Washington Mills*, 93 Mass. 268; *Smith v. Moody*, 26 Ind. 299.

5 *Scott v. Sandford*, 19 How. 580.

6 *Ward v. Maryland*, 12 Wall. 430; *Crandall v. Nevada*, 6 Wall. 49; *Lemmon v. People*, 20 N. Y. 607; 26 Barb. 270; *Ex parte Archy*, 9 Cal. 147; *Willard v. People*, 5 Ill. 461; *Julia v. McKinney*, 3 Mo. 270; *State v. Medbury*, 3 R. I. 142.

7 *Tennessee v. Claiborne*, 1 Meigs, 331.

8 *Conner v. Elliott*, 18 How. 593; *Live Stock &c. Asso. v. Crescent City &c. Co.* 1 Abb. U. S. 397; *Ex rel Hobbs*, 1 Woods, 542.

9 *Conner v. Elliott*, 18 How. 593; *Slaughter-House Cases*, 16 Wall. 36; 1 Woods, 28; *Live Stock &c. Asso. v. Crescent City &c. Co.* 1 Abb. U. S. 397.

10 *Scott v. Sandford*, 19 How. 580; *Murray v. McCarty*, 2 Munf. 393; *Allen v. Sarah*, 2 Har. 434; *Smith v. Moody*, 26 Ind. 299; *Campbell v. Morris*, 3 Har. & McH. 535.

11 *Ex parte Coupland*, 26 Tex. 420.

12 *Davis v. Pierce*, 7 Minn. 13; *McFarland v. Butler*, 8 Ibid. 116; *Jackson v. Butler*, Ibid. 117; *Morgan v. Neville*, 74 Pa. St. 52; *Reynolds v. Geary*, 26 Conn. 183.

13 *Morgan v. Neville*, 74 Pa. St. 52. But this right may be limited—*Kincaid v. Francis*, Cooke, 49; *Campbell v. Morris*, 3 Har. & McH. 535.

14 *Barrell v. Benjamin*, 15 Mass. 354.

15 *Chapman v. Miller*, 2 Spear, 769.

16 *Bartemeyer v. Iowa*, 18 Wall. 133; *Harris v. State*, 4 Tex. Ct. App. 131; *Bertholf v. O'Rielly*, 18 Am. L. R. N. S. 119; *Wynehamer v. People*, 13 N. Y. 378; *Groversville v. Howell*, 70 N. Y. 267; *Slaughter-House Cases*, 16 Wall. 36; *O'Dea v. State*, 57 Ind. 119; *Metrop. Bd. of Excise v. Barrie*, 34 N. Y. 657; *Beer Co. v. Massachusetts*, 97 U. S. 25.

17 *Languille v. State*, 4 Tex. Ct. App. 312

18 *Scott v. Sandford*, 19 How. 583, denying *Amy v. Smith*, 1 Litt. 328.

See *post*, Amendment XIV.

**State rights.**—The main object of this clause was to prevent each State from discriminating in favor of its own people, or against those of any other State.<sup>1</sup> Citizens do not by this clause acquire any peculiar privileges in another State, except upon the condition on which they may be held or enjoyed by the citizens of such other State;<sup>2</sup> and where the laws differ, a citizen of one State, claiming rights in another, must claim according to the laws of that State and not of his own.<sup>3</sup> This clause does not apply to one who migrates to another State, the State in which he takes up his residence may determine his *status*;<sup>4</sup> such person must be regarded as a citizen of the State.<sup>5</sup> This clause does not exempt the citizens of another State from any condition which the laws of the State impose on its own citizens,<sup>6</sup> nor to interfere with the local policy of State governments as to their own citizens.<sup>7</sup> This clause prohibits discrimination by one State against citizens of another State;<sup>8</sup> but it is not intended to secure the citizens of any State against discriminations made by their own State in favor of citizens of other States, nor of one class against another class of citizens of the same State.<sup>9</sup> So, statutes of limitations discriminating as to residence are not unconstitutional.<sup>10</sup> A State law imposing a discriminating tax on non-resident traders is void,<sup>11</sup> but the property of a non-resident may be taxed equally with that of a resident.<sup>12</sup> A tax on those who sell goods brought into the State and not owned by residents is valid.<sup>13</sup> A license on the sale of goods by non-resident traders is valid if there is no discrimination;<sup>14</sup> so, a license required to vend foreign merchandise is valid,<sup>15</sup> or for all articles except those manufactured by themselves within the limits of the State;<sup>16</sup> so, a State tax on articles manufactured in the State is valid.<sup>17</sup> A State is not prohibited from regulating or restricting the business of a corporation created by the laws of another State,<sup>18</sup> and may impose terms or conditions on its right to carry on business within its territory.<sup>19</sup> A State may impose reasonable conditions on a foreign corporation for the privilege of doing business within its limits.<sup>20</sup> The provisions of this section do not apply to corporations.<sup>21</sup>

1 Davis *v.* Pierce, 7 Minn. 13.

2 Paul *v.* Virginia, 8 Wall. 168; Reynolds *v.* Geary, 26 Conn. 179; Commonwealth *v.* Milton, 12 B. Mon. 212; Lemmon *v.* People, 5 Sandf. 681; 20 N. Y. 562; 26 Barb. 270.

3 Lemmon *v.* People, 5 Sandf. 681; 20 N. Y. 562; 26 Barb. 270.

4 Groves *v.* Slaughter, 15 Peters, 449; Strader *v.* Graham, 10 How; 82; Moore *v.* Illinois, 14 How. 13; New York *v.* Miln, 11 Peters, 102. Ex parte Simmons, 4 Wash. C. C. 356; Scott *v.* Sandford, 19 How. 398. Bradwell *v.* State, 16 Wall. 130. But see Abbot *v.* Bayley, 23 Mass. 89.

- 5 Commonwealth v. Towles, 5 Leigh, 743.
- 6 Paul v. Virginia, 8 Wall. 180; Commonwealth v. Milton, 12 B. Mon. 212; Lemmon v. People, 20 N. Y. 607; 26 Barb. 270; Jackson v. Bullock, 12 Conn. 38.
- 7 Kincaid v. Francis, Cooke, 49.
- 8 Paul v. Virginia, 8 Wall. 168; Ward v. Maryland, 12 Wall. 418; Williams v. Bruffy, 96 U. S. 183; Corfield v. Coryell, 4 Wash. C. C. 371; Lemmon v. People, 20 N. Y. 608.
- 9 Commonwealth v. Griffin, 3 B. Mon. 208; Bradwell v. State, 16 Wall. 138.
- 10 Chemung Bank v. Lowery, 93 U. S. 77.
- 11 Ward v. Maryland, 12 Wall. 418; Wiley v. Parmer, 14 Ala. 627; Osborne v. Mobile, 16 Wall. 482; Welton v. Missouri, 55 Mo. 288; State v. Browning, 62 Mo. 531.
- 12 Duer v. Small, 4 Blatchf. 263; Battle v. Corporation, 9 Ala. 234.
- 13 People v. Coleman, 4 Cal. 46.
- 14 Woodruff v. Parham, 8 Wall. 123; Hinson v. Lott, 8 Wall. 148; Mount Pleasant v. Clutch, 6 Iowa, 546.
- 15 Sears v. Commissioners, 36 Ind. 267.
- 16 Seymour v. State, 51 Ala. 52.
- 17 Dowham v. Alexandria Co. 10 Wall. 173.
- 18 Paul v. Virginia, 8 Wall. 168; Ducat v. Chicago, 10 Wall. 410; Liverpool Ins. Co. v. Massachusetts, 10 Wall. 567.
- 19 Lafayette Ins. Co. v. French, 18 How. 404; Ducat v. Chicago, 10 Wall. 410.
- 20 Ins. Co. v. Morse, 20 Wall. 457; Bank of Augusta v. Earle, 13 Peters, 519; Liverpool Ins. Co. v. Massachusetts, 10 Wall. 566; Louisiana v. Lathrop, 10 La. An. 398; Doyle v. Continental Ins. Co. 94 U. S. 540; In re Comstock, 11 Bank. Reg. 172; Lamb v. Lamb, 6 Biss. 420; Hoffman v. Banks, 41 Ind. 1; Rising Sun Ins. Co. v. Slaughter, 30 Ind. 520; Wash. Co. M. Ins. Co. v. Hastings, 84 Mass. 398; Williams v. Cheney, 74 Mass. 206; Paul v. Virginia, 8 Wall. 168; Ins Co. v. N. O. 1 Woods, 89; Ex parte Robinson, 12 Nev. 263; Ex parte Cohn, 13 Nev. 424.
- 21 Warren Manuf. Co. v. Etna Ins. Co. 2 Paine, 516.

*2 A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.*

**Fugitives from justice.**—A fugitive from justice is any person who commits a crime and withdraws himself from the jurisdiction to avoid the punishment;<sup>1</sup> or one who secretly commits a crime and suddenly departs;<sup>2</sup> or who commits a crime and leaves without waiting to be tried;<sup>3</sup> or who, conscious of being liable to prosecution, leaves the State, or if admitted to bail forfeits the same and again flees.<sup>4</sup> Treason, felony, or other crime embrace every act made punishable by the laws of the State where committed.<sup>5</sup> It is not necessary that the crime charged

should be an offense at common law,<sup>6</sup> it is enough if it is a crime against the State,<sup>7</sup> and includes any act punishable by law,<sup>8</sup> misdemeanors as well as treason.<sup>9</sup> The word "crime" embraces every species of indictable offense,<sup>10</sup> and even an act which was not criminal at the time of the adoption of the Constitution, but was made so by subsequent legislation.<sup>11</sup> Whether the act charged be a crime is to be determined by the laws of the State from which the accused has fled, although it may be no crime in the State into which he has come.<sup>12</sup> A fugitive may be detained and arrested until a formal requisition can be made by the proper authority.<sup>13</sup> See Supplement, *post*, 318.

1 Voorhees' Case, 32 N. J. 147.

2 Adams' Case, 7 Law Rep. 386.

3 Certain Fugitives, 24 Am. Jur. 226.

4 Ex parte Greenough, 31 Vt. 279.

5 Kentucky v. Dennison, 24 How. 107; Comm. v. Green, 17 Mass. 515; 18 Alb. L. J. 207; Morton v. Skinner, 48 In. 123; Burns' Case, 112 Mass. 410; Wright v. Deacon, 5 Serg. & R. 62; People v. Brady, 53 N. Y. 187; Ex parte Clark, 9 Wend. 212; Ex parte Greenough, 31 Vt. 279.

6 In re Fetter, 3 Zab. 311.

7 Johnson v. Riley, 13 Ga. 97; In re Clark, 9 Wend. 221; Commonwealth v. Daniels, 6 Pa. L. J. 428; Hayward's Case, 1 Am. L. J. 231.

8 Kentucky v. Dennison, 24 How. 99.

9 Kentucky v. Dennison, 24 How. 100.

10 Voorhees' Case, 32 N. J. 147.

11 Voorhees' Case, 32 N. J. 147; People v. Brady, 53 N. Y. 182; Ex parte Hughes, Phill. (N. C.) 57.

12 Kentucky v. Ohio, 24 How. 103; Johnson v. Riley, 13 Ga. 133.

13 Gardner's Case, 2 Johns. 477; Comm. v. Deacon, 10 Serg. & R. 135; Dow's Case, 6 Har. 39; In re Fetter, 3 Zab. 311; Stato v. Buzine, 4 Har. 572; In re Clark, 9 Wend. 221; Goodhue's Case, 1 City H. Rec. 153.

**Demand for surrender.**—The demand and accompanying charge are conclusive as to the criminality of the offense.<sup>1</sup> Where the indictment substantially charges a criminal offense, the court will not go behind it, nor inquire into the circumstances.<sup>2</sup> A copy of the indictment authenticated by the governor is conclusive.<sup>3</sup> The precept is *prima facie* evidence for the protection of the agent of the truth of the recitals.<sup>4</sup> The executive authority of the State is not authorized to make demand unless the party is charged in the regular course of judicial proceedings.<sup>5</sup> The whole effect of the Constitution is to confer on each member of the Union a right to demand from every other member a fugitive, and to make obligatory the surrender which was before discretionary.<sup>6</sup> The right to claim the surrender of a fugitive can be carried into effect only through the medium of laws and the interven-



tion of magistrates.<sup>7</sup> The Constitution does not assume to deal with the question before the proper executive demand has been made, nor undertake, in the absence of demand, to define the duties nor limit the authority of the State within which the fugitive may be found.<sup>8</sup>

1 *Johnson v. Riley*, 13 Ga. 133; *Kentucky v. Ohio*, 24 How. 100; *Ex parte Clark*, 9 Wend. 212; *People v. Brady*, 56 N. Y. 182.

2 *Taylor v. Taintor*, 16 Wall. 366; 36 Conn. 242; *Kentucky v. Ohio*, 24 How. 63; *Kingsbury's Case*, 106 Mass. 223; *Brown's Case*, 112 Mass. 409; *Voorhees' Case*, 32 N. J. 141; *In re Clark*, 9 Wend. 212; *Johnson v. Riley*, 13 Ga. 97; *In re Greenough*, 31 Vt. 279.

3 *Kentucky v. Ohio*, 24 How. 66; *Taylor v. Taintor*, 16 Wall. 366; *Johnson v. Riley*, 13 Ga. 97; *Brown's Case*, 112 Mass. 409; *People v. Brady*, 56 N. Y. 182; *Voorhees' Case*, 32 N. J. 141; *Work v. Corrington*, 34 Ohio St. 64; *Clark's Case*, 9 Wend. 212; *In re Fetter*, 3 Zab. 311.

4 *Commonwealth v. Hall*, 9 Gray, 267.

5 *Kentucky v. Ohio*, 24 How. 66.

6 *In re Fetter*, 23 N. J. 311.

7 *Commonwealth v. Tracy*, 46 Mass. 536.

8 *Ex parte White*, 47 Cal. 433; *Ex parte Cubreth*, *Ibid.* 435; *Commonwealth v. Tracy*, 46 Mass. 536.

**Surrender of fugitives.**—The duty to surrender is not one resting in discretion, it is obligatory on the States.<sup>1</sup> So far as seeing that the case is a proper one, the governor acts judicially.<sup>2</sup> The governor or executive authority of the State or Territory to which the fugitive has fled shall, upon demand, deliver him up,<sup>3</sup> and the State upon which the demand is made cannot look behind the indictment or affidavit in which the crime against the State is charged.<sup>4</sup> The delivery up of fugitives from justice is not an ordinary exercise of the police powers of the State.<sup>5</sup> The States may pass laws auxiliary to the provisions of the Constitution.<sup>6</sup> In case of a conflict of jurisdiction between two States, the surrender may be postponed.<sup>7</sup> A law authorizing the arrest of a fugitive from justice before a demand for his surrender has been made, and his detention for a reasonable time to afford an opportunity for such demand, is not in conflict with this section.<sup>8</sup> Congress has the power to vest in any national officer authority to cause the arrest and to surrender the fugitive on the proper requisition.<sup>9</sup> A State law intended to aid in the enforcement of the act of Congress relating to the surrender of fugitives is valid;<sup>10</sup> so, a law requiring the officer making the arrest to take the party before the nearest judge for identification is valid;<sup>11</sup> so, a law which makes it the duty of the executive to issue the warrant upon a proper requisition is constitutional.<sup>12</sup> State courts cannot control the executive discretion, nor compel the

surrender of a fugitive; but the executives having acted, its discretion may be inquired into.<sup>13</sup> Foreign extradition jurisdiction is purely political, and belongs to the Executive of the National Government.<sup>14</sup> A State cannot regulate the surrender of fugitives from justice to foreign countries, although no action has been taken by the Federal Government.<sup>15</sup> A law allowing fugitives from justice to be arrested and delivered up to the State having jurisdiction, is not in conflict with this provision.<sup>16</sup> A State may retain a fugitive from justice, although his arrest was without legal authority.<sup>17</sup> This provision is in the nature of a treaty stipulation between the States, and equally binding on each and all the officers thereof, even in absence of congressional legislation.<sup>18</sup>

1 *Kentucky v. Dennison*, 24 How. 103; *Taylor v. Taintor*, 16 Wall. 370; *Johnston v. Riley*, 13 Ga. 135; *Matter of Briscoe*, 51 How. Pr. 422; *State v. Schielman*, 4 Har. 577; *State v. Buzine*, Ibid. 572; *Commonwealth v. Green*, 17 Mass. 547; *Voorhees' Case*, 32 N. J. 145; *In re Fetter*, 3 Zab. 311; *Work v. Corrington*, 34 Ohio St. 64; *Wyeth v. Richardson*, 10 Gray, 240.

2 *In re Greenough*, 31 Vt. 279.

3 *Burns' Case*, 112 Mass. 409.

4 *Johnston v. Riley*, 13 Ga. 97; *Voorhees' Case*, 32 N. J. 145.

5 *Holmes v. Jennison*, 14 Peters, 540.

6 *Holmes v. Jennison*, 14 Peters, 540; *Moore v. Illinois*, 14 How. 21; *Matter of Romaine*, 23 Cal. 585; *Ex parte Culbreth*, 49 Cal. 436; *Ex parte Rosenblat*, 51 Cal. 285; *Robinson v. Flanders*, 29 Ind. 10; *Ex parte Smith*, 3 McLean, 121; *Comm. v. Hall*, 75 Mass. 262; *Comm. v. Tracy*, 46 Mass. 536.

7 *Hagan v. Lucas*, 10 Peters, 400; *Taylor v. Carryl*, 20 How. 584; *Taylor v. Taintor*, 16 Wall. 366; 36 Conn. 242; *Ex parte Jenkins*, 2 Am. L. R. 144; *In re Briscoe*, 51 How. Pr. 422; *State v. Allen*, 2 Humph. 258; *In re Troutman*, 4 Zab. 604.

8 *Ex parte Culbreth*, 49 Cal. 436; *Ex parte White*, 49 Cal. 434; *Dow's Case*, 6 Har. 39; *State v. Buzine*, 4 Har. 572; *Goodhue's Case*, 1 Wheel. C. C. 427; 1 City Hall Rec. 153; *Gardner's Case*, 2 Johns. 477; *Commonwealth v. Wilson*, Phila. 80; *Commonwealth v. Deacon*, 10 Serg. & R. 135; *In re Fetter*, 3 Zab. 311; *People v. Schenck*, 2 Johns. 479; *People v. Wright*, 2 Caines, 213; *Ex parte Heyward*, 1 Sand. 701.

9 *Voorhees' Case*, 32 N. J. 145.

10 *Commonwealth v. Hall*, 75 Mass. 262.

11 *Robinson v. Flanders*, 29 Ind. 10.

12 *Ex parte Smith*, 3 McLean, 121.

13 *Ex parte Manchester*, 5 Cal. 237.

14 *Holmes v. Jennison*, 14 Peters, 540; *In re Kaine*, 14 How. 103; *In re Washburn*, 4 Johns. Ch. 106; *Commonwealth v. Green*, 17 Mass. 546; *Commonwealth v. Deacon*, 10 Serg. & R. 125; *In re Fetter*, 3 Zab. 311.

15 *People v. Curtis*, 50 N. Y. 321. See *Holmes v. Jennison*, 14 Peters, 540.

16 *Ex parte White*, 49 Cal. 434; *Ex parte Culbreth*, 49 Cal. 436.

17 *New Jersey v. Noyes*, 11 Ch. L. N. 9.

18 *Ex parte Hibler*, 43 Tex. 197.

*3 No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

**Fugitives from labor.**—Congress has exclusive power to legislate concerning fugitives from labor.<sup>1</sup> The act of Congress in relation to the surrender of fugitives in the Northwest Territory is constitutional.<sup>2</sup> The Constitution and laws do not confer, but secure, the right to reclaim.<sup>3</sup> The word "person" includes slaves,<sup>4</sup> and apprentices,<sup>5</sup> but it does not extend to a slave voluntarily carried by his master into a free State.<sup>6</sup> The words "in one State" extend to the Territories, the District of Columbia, and the Indian Territory.<sup>7</sup> The words "shall be delivered up" contemplate summary and informal proceedings.<sup>8</sup> The Constitution recognizes the plenary and exclusive power of States over the status of slaves within their territory, subject to the express limitation in case of fleeing from service.<sup>9</sup>

1 *Prigg v. Commonwealth*, 16 Peters, 539; *Jones v. Vanzandt*, 5 How. 215; 2 *McLean*, 612; *In re Martin*, 2 Paine, 348; *In re Susan*, 2 Wheel. Cr. Cas. 594.

2 *Jones v. Vanzandt*, 5 How. 230; *Johnson v. Tompkins*, Bald. 571; *Hill v. Low*, 4 Wash. C. C. 326; *Glenn v. Hodges*, 9 Johns. 67; *Comm. v. Aves*, 18 Pick. 215; *Jack v. Martin*, 12 Wend. 311; *Anonymous*, 6 Op. Att. Gen. 713; *Wright v. Deacon*, 5 Serg. & R. 62.

3 *Ableman v. Booth*, 21 How. 526; 3 *Wis.* 1; *Johnson v. Tompkins*, Bald. 571; *The Fugitive Slave Law*, 1 Blatchf. 635; *Giltner v. Gorham*; 4 *McLean*, 402; *Sims' Case*, 61 Mass. 285; *Long's Case*, 3 Am. Law J. 201; 9 *N. Y. Leg. Obs.* 73; *Anonymous*, 6 Op. Att. Gen. 713.

4 *Lemmon v. People*, 20 N. Y. 624.

5 *Boaler v. Cummins*, 1 Am. L. R. 654.

6 *Strader v. Graham*, 10 How. 82; *Vaughan v. Williams* 3 *McLean*, 530; *Miller v. McQuerry*, 5 *McLean*, 460; *Butler v. Hopper*, 1 Wash. C. C. 499; *In re Perkins*, 2 Cal. 424; *Pierce's Case*, 1 West. L. Obs. 14; *Kauffman v. Oliver*, 10 Pa. St. 517.

7 *Anonymous*, 3 Op. Att. Gen. 370; *Anonymous*, 6 Op. Att. Gen. 302, 304.

8 *Prigg v. Commonwealth*, 16 Peters, 667; *Jack v. Martin*, 14 Wend. 507; 12 Wend. 311; *Sims' Case*, 61 Mass. 285; *Wright v. Deacon*, 5 Serg. & R. 62.

9 *Groves v. Slaughter*, 15 Peters, 449; *Moore v. Illinois*, 14 How. 20, *Lemmon v. People*, 20 N. Y. 563; *New York v. Milne*, 11 Peters, 102.

## SECTION 3.

*New States.*

1. Admission of.

2. Power of United States over Territorial and other property.

**Sec. 3.** *1 New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.*

**Admission of new States.**—This clause refers to and includes new States to be formed out of territory yet to be acquired, as well as that already ceded.<sup>1</sup> The power to acquire territory by conquest or by treaty is consequent on the absolute grant of power of making war and making treaties.<sup>2</sup> New States, when admitted, have equal sovereignty with the older ones,<sup>3</sup> but stipulations imposed by Congress on a new State as a condition of its admission into the Union may be effectual as a regulation of commerce or other exercise of a conditional grant of power,<sup>4</sup> but a stipulation granting municipal rights of sovereignty would be void and inoperative,<sup>5</sup> and when a condition annexed to a State constitution is legally and formally rescinded, the powers disclaimed may be resumed and immediately exercised by the State authorities.<sup>6</sup> If Congress, upon application of a Territory, consents to admit it as a State upon condition of certain alterations in the proposed constitution, which alterations are accepted, such alterations become part of the State constitution.<sup>7</sup> The Ordinance of 1787 is of no effect in any State formed out of the old Northwest Territory, unless re-enacted by such State.<sup>8</sup> The consent of the legislatures of the States may be given upon conditions which, if accepted by the United States, are binding upon the General Government.<sup>9</sup> Congress is vested with the sole power of admitting new States into the Union.<sup>10</sup>

1 Scott v. Sandford, 19 How. 612.

2 American Ins. Co. v. Canter, 1 Peters, 542; Sere v. Pitot, 6 Cranch, 336; Fleming v. Page, 9 How. 614; Cross v. Harrison, 16 How. 189; Scott v. Sandford, 19 How. 395. And see Worcester v. Georgia, 6 Peters, 515; New Orleans v. De Armas, 9 Peters, 224; Holden v. Joy, 17 Wall. 211.

3 Pollard v. Hagan, 3 How. 212; Withers v. Burkley, 20 How. 84; 29 Miss. 21; v. First Municipality, 3 How. 610.

4 Pollard v. Hagan, 3 How. 229.

5 Pollard v. Hagan, 3 How. 229; Strader v. Graham, 10 How. 82; Depew v. Trustees, 5 Ind. 8.

6 Duke v. Navigation Co. 10 Ala. 82.

7 *Brittle v. The People*, 2 Neb. 198.

8 *Permoli v. First Municipality*, 3 How. 610; *Stradler v. Graham*, 10 How. 82.

9 *Pollard v. Hagan*, 3 How. 223.

10 *Brutle v. People*, 2 Neb. 198.

*2 The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.*

**Territorial property.**—“To dispose of” means to make sale of the lands, or otherwise to raise money from them.<sup>1</sup> The power of Congress is not limited to a sale, but includes the power to lease;<sup>2</sup> but all disposition of the lands must be by authority of Congress.<sup>3</sup> So, a military officer at the head of a provisional government is not authorized to make a grant of public lands.<sup>4</sup> It may dispose of the public lands as homesteads secured from debts prior to issue of patent.<sup>5</sup> This clause does not confer on Congress any power to grant the shores of navigable waters, or the soil under them, within a State.<sup>6</sup> “Needful rules” means appropriate legislation,<sup>7</sup> including the passage of all laws necessary to secure the rights of the United States to the public lands, and to provide for their sale, and to protect them from taxation.<sup>8</sup> It can make all needful rules and regulations, but only for the disposition and protection of lands within the limits of a State.<sup>9</sup> So, it may provide that all contracts and transfers relating to such land, made before the patent issues, shall be void.<sup>10</sup> It has the absolute right to prescribe the times, conditions, and modes of transfer of the public domain, and to whom transfers shall be made,<sup>11</sup> and it has the sole power to declare the dignity and effect of United States titles;<sup>12</sup> and when the acts of Congress make a patent necessary to complete the title, no State can make anything else evidence of title,<sup>13</sup> nor can a State pass a law depriving a patentee of the possession of property by reason of delay in the transfer of title after initiation of proceedings for its acquisition.<sup>14</sup> “Territory” is equivalent to the word “lands,”<sup>15</sup> and the words “respecting the territory” refer only to the “territory” owned by the United States at the time of the adoption of the Constitution;<sup>16</sup> subsequently acquired territory is subject to the legislation of Congress as an incident to its ownership;<sup>17</sup> the right to govern is the inevitable conse-

quence of the right to acquire.<sup>18</sup> In legislating for the Territories, Congress exercises the combined powers of the General and of the State Governments.<sup>19</sup> It has the absolute power of governing and legislating for the Territories, and may give jurisdiction to territorial courts,<sup>20</sup> but such courts are not courts of the United States.<sup>21</sup> The general jurisdiction over the place subject to this grant of power adheres to the Territory as a portion of the States not yet given away.<sup>22</sup> Where territory has once been solemnly ceded by the Indians it cannot afterwards be treated as Indian country.<sup>23</sup> See Supplement, *post*, 318.

- 1 *Scott v. Sandford*, 19 How. 615.
- 2 *U. S. v. Gratiot*, 1 McLean, 454; 14 Peters, 526; *Shawks' Case*, 4 Op. Att.-Gen. 437.
- 3 *U. S. v. Nicol*, 1 Paine, 646; *Seabury v. Field*, 1 Wall. 1; *U. S. v. Fitzgerald*, 15 Peters, 407; *McConnell v. Wilcox*, 2 Ill. 344.
- 4 *Seabury v. Field*, 1 McAll. 1.
- 5 *Miller v. Little*, 47 Cal. 348; *Russell v. Lowth*, 21 Minn. 167; *Gile v. Hallock*, 33 Wis. 523.
- 6 *Pollard v. Hagan*, 3 How. 212.
- 7 *Scott v. Sandford*, 19 How. 615.
- 8 *Pollard v. Hagan*, 3 How. 212.
- 9 *U. S. v. Railroad Br. Co.* 6 McLean, 517; *Rose v. Buckland*, 17 Ill. 309; *Dyke v. McVey*, 16 Ill. 41.
- 10 *Dyke v. McVey*, 16 Ill. 41; *Rose v. Buckland*, 17 Ill. 309.
- 11 *Irvine v. Marshall*, 20 How. 558; *Gibson v. Chouteau*, 13 Wall. 92.
- 12 *Bagnell v. Broderick*, 13 Peters, 436.
- 13 *Wilcox v. Jackson*, 13 Peters, 498.
- 14 *Gibson v. Chouteau*, 13 Wall. 92.
- 15 *U. S. v. Gratiot*, 14 Peters, 537.
- 16 *Scott v. Sandford*, 19 How. 442.
- 17 *Amer. Ins. Co. v. Canter*, 1 Peters, 511.
- 18 *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *U. S. v. Gratiot*, 14 Peters, 526; 1 McLean, 454; *Scott v. Sandford*, 19 How. 393; *Cross v. Harrison*, 16 How. 164.
- 19 *Amer. Ins. Co. v. Canter*, 1 Peters, 511.
- 20 *Sere v. Pitot*, 6 Cranch, 332; *Leitersdorfer v. Webb*, 20 How. 182.
- 21 *Hunt v. Paloa*, 4 How. 589; *Clinton v. Englebrecht*, 13 Wall. 448, explaining *Orchard v. Hughes*, 1 Wall. 73.
- 22 *U. S. v. Bevans*, 3 Wheat. 337; *Smith v. Maryland*, 18 How. 71; *The Wave v. Hyer, Blatchf. & H.* 235; 2 Paine, 131.
- 23 *Clark v. Bates*, 1 Dakota, 42.

**Territorial government.**—Congress may govern the Territories mediately or immediately, either by the creation of a territorial government or by the passage of laws directly operating upon the Territory.<sup>1</sup> The power of Congress to establish a territorial government is implied from the necessity of the protection of the rights of person and property beyond the limits of any State;<sup>2</sup> the form of such government resting in the discretion of Congress, within the definition and limitations of the Constitution.<sup>3</sup> A territorial legislature is a creation of Congress, and derives its power therefrom,<sup>4</sup> and its acts will not avail if adopted after its admission as a State.<sup>5</sup> A territorial legislature may pass an act authorizing judgment against sureties on an appeal bond, as well as against appellants.<sup>6</sup> It has no power to deprive United States courts of chancery as well as common-law jurisdiction.<sup>7</sup> Territorial courts are invested with powers conferred by Congress in the exercise of those general powers which Congress possesses over the territory.<sup>8</sup> They have the power to issue writs of *habeas corpus* like Federal courts.<sup>9</sup> Where the organic act confers only the power "to change" the location, the legislature has no power to fix the location of the seat of government.<sup>10</sup> See Supplement, *post*, 318.

1 *Edwards v. Panama*, 1 Oreg. 418.

2 *U. S. v. Gratiot*, 14 Peters, 537; *U. S. v. R. R. Bridge Co.*, 6 McLean, 517; *State v. Navigation Co.*, 11 Mart. 309.

3 *Scott v. Sandford*, 19 How. 393; *Ex parte Perkins*, 2 Cal. 424.

4 *Treadway v. Schnauber*, 1 Dakota, 236.

5 *State v. Hitchcock*, 1 Kans. 178.

6 *Beall v. New Mexico*, 16 Wall. 535.

7 *Dunphy v. Kleinsmith*, 11 Wall. 614.

8 *American Ins. Co. v. Canter*, 1 Peters, 511; *Stacy v. Abbott*, 1 Am. L. T. 84.

9 *U. S. v. Burdick*, 1 Dakota, 142.

10 *Seat of Gov.* 1 Wash. Terr. 135.

#### SECTION 4.

*Republican form of government guaranteed. Protection against invasion.*

**Sec. 4.** <sup>1</sup> *The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.*

It is for Congress to decide what government is the established one in a State, and whether it is republican or not, and its decision is binding on every other department of the Government.<sup>1</sup> Congress may delegate to the President the power to decide whether a State government is the duly constituted government of that State.<sup>2</sup> The State here meant must be a member of the Union,<sup>3</sup> a people or community.<sup>4</sup> No particular government is designated as republican, nor is the exact form in any manner especially indicated.<sup>5</sup> The term "form of government" cast upon Congress the duty, upon the suppression of the Rebellion, to re-establish the broken relations of States which had seceded.<sup>6</sup> It is the only department of Government authorized to reorganize and reconstruct the rebellious States.<sup>7</sup> In the exercise of this power a discretion as to the means is necessarily implied.<sup>8</sup> Congress may require that the new State constitution shall adopt any measure which Congress has the power to enact and enforce.<sup>9</sup> Where a rebellious State frames a new constitution, which is approved by Congress, such State is estopped to deny its validity;<sup>10</sup> but the approval of such constitution does not make it an act of Congress.<sup>11</sup> See *post*, 319.

1 Luther v. Borden, 7 How. 42; Texas v. White, 7 Wall. 730. And see U. S. v. Rhodes, 1 Abb. U. S. 47; Ex parte Coupland, 26 Tex. 434; White v. Hart, 13 Wall. 646; 39 Ga. 306.

2 Luther v. Borden, 7 How. 44.

3 Scott v. Jones, 5 How. 377; Cherokee Nation v. Georgia, 5 Peters, 18.

4 Texas v. White, 7 Wall. 700.

5 Minor v. Happersett, 21 Wall. 162.

6 Texas v. White, 7 Wall. 727.

7 Powell v. Boon, 43 Ala. 469.

8 Texas v. White, 7 Wall. 727.

9 Hardeman v. Downer, 39 Ga. 425.

10 White v. Hart, 13 Wall. 646; 39 Ga. 306.

11 White v. Hart, 13 Wall. 646; 39 Ga. 306; Marsh v. Burroughs, 1 Woods, 463; Homestead Cases, 23 Gratt. 266; In re Kennedy, 2 Rich. 116.



## ARTICLE V.

## AMENDMENTS.

## SECTION 1.

*Manner of making Amendments to Constitution.*

<sup>1</sup> *The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.*

**Amendments.**—No limit can be imposed on the people in their sovereign capacity in amending the Constitution.<sup>1</sup> The approval by the President of a proposed amendment is not necessary.<sup>2</sup> All amendments adopted at the first session of Congress, consisting of the first ten, were intended to apply to the General Government only, and not as restrictions on the State governments.<sup>3</sup>

1 *Ex parte Griffin*, 25 Tex. Supp. 623; *Chase*, 364.

2 *Hollingsworth v. Virginia*, 3 Dall. 378.

3 *Barron v. Baltimore*, 7 Peters, 250; *Livingston v. Moore*, 7 Peters, 469; *Bald.* 424; *Fox v. Ohio*, 5 How. 434; *Smith v. Maryland*, 18 How. 76; *Withers v. Buckley*, 20 How. 90; 29 Miss. 21; *Legal Tender Cases*, 12 Wall. 535; *North Mo. R. R. Co. v. McGuire*, 20 Wall. 46; 49 Mo. 490; *Edwards v. Elliott*, 21 Wall. 557; *Twitchell v. Commonwealth*, 7 Wall. 325; *Pervear v. Commonwealth*, 5 Wall. 479; *U. S. v. Cruikshank*, 92 U. S. 552; 1 Woods, 308; *U. S. v. Rhodes*, 1 Abb. U. S. 43; *Colt v. Eves*, 12 Conn. 243; *Jackson v. Woods*, 2 Cow. 819; *Murphy v. People*, 2 Cow. 815; *Barker v. People*, 3 Cow. 686; *Hill v. State*, 53 Ga. 472; *Baker v. Wise*, 16 Gratt. 139; *Bryan v. State*, 4 Iowa, 349; *State v. Barnett*, 3 Kans. 250; *Commonwealth v. Hitchings*, 71 Mass. 482; *Commonwealth v. Pomeroy*, 71 Mass. 486; *State v. Shricker*, 29 Mo. 265; *State v. Millain*, 3 Nev. 407; *State v. Paul*, 5 R. I. 185; *James v. Commonwealth*, 12 Serg. & R. 220; *Lincoln v. Smith*, 27 Vt. 328; *Livingston v. Mayor*, 8 Wend. 85; *Matt. of Smith*, 10 Wend. 449; *Lea v. Tillotson*, 24 Wend. 337.

## ARTICLE VI.

## PROMISCUOUS PROVISIONS.

## SECTION 1.

*General provisions.*

1. Debts. Existing obligations.
2. Supreme law of the land.
3. Oath to support Constitution. No religious test.

*<sup>1</sup> All debts contracted and engagement entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.*

**The debts of the first Confederation were assumed.**

Terrett v. Taylor, 9 Cranch, 50; Kelly v. Harrison, 2 Johns. Cas. 29; Jackson v. Lampshire, 3 Johns. Cas. 109.

*<sup>2</sup> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*

**Government supremacy.**—The object of the Constitution was to establish a Government which to the extent of its powers should be supreme<sup>1</sup> within its sphere of action,<sup>2</sup> the Constitution being the paramount law of the land,<sup>3</sup> and the Ordinance of 1787 being a part thereof.<sup>4</sup> The Constitution, treaties, and laws made by the General Government on the rights, duties, and subjects specially enumerated and confided to their jurisdiction are exclusive and supreme as well by express provisions as by necessary implication.<sup>5</sup> The Constitution is by this clause made a part of the organic law of each State.<sup>6</sup> The Government of the United States and that of the States are to be considered as parts of the same system.<sup>7</sup> The laws of the United States are supreme only when made in pursuance of the Constitution,<sup>8</sup> and an act of Congress repugnant to the Constitution is void.<sup>9</sup> From the supremacy of

the Constitution and laws of the United States it necessarily results that the interpretation of the laws by the highest tribunal created by the law itself, must be equally supreme over the constitutions and laws of the several States.<sup>10</sup> The law of a State, though enacted in the exercise of powers not controverted, if they interfere with the laws of Congress must yield to them.<sup>11</sup> A treaty has the binding force of a law.<sup>12</sup> See Supplement, *post*, 319.

1 Dobbins *v.* Comms. of Erie Co. 16 Peters, 435; Ableman *v.* Booth, 21 How. 520; 3 Wis. 1; Cohens *v.* Virginia, 6 Wheat. 264; U. S. *v.* Rhodes, 1 Abb. U. S. 44.

2 McCulloch *v.* Maryland, 4 Wheat. 316.

3 Prigg *v.* Commonwealth, 16 Peters, 628; New Jersey *v.* Wilson, 7 Cranch, 164; Terrett *v.* Taylor, 9 Cranch, 43; Von Hoffman *v.* Quincy, 4 Wall. 535; Taylor *v.* Taintor, 16 Wall. 366; Matter of Romaine, 23 Cal. 585.

4 Pollard *v.* Kibbe, 14 Peters, 417.

5 Dodge *v.* Woolsey, 18 How. 331; Farmers & M. Bank *v.* Deering, 91 U. S. 29; Farrington *v.* Tennessee, 95 U. S. 685; Pensacola T. Co. *v.* West. U. Tel. Co. 96 U. S. 1; Sims' Case, 7 Cush. 729; U. S. *v.* Rhodes, 1 Abb. U. S. 44.

6 Taylor *v.* Taintor, 16 Wall. 366; Matter of Romaine, 23 Cal. 585.

7 Stearns *v.* U. S. 2 Paine, 300; Gilmer *v.* Lime Point, 18 Cal. 229.

8 Marbury *v.* Madison, 1 Cranch, 137; McCulloch *v.* State, 4 Wheat. 316.

9 Marbury *v.* Madison, 1 Cranch, 137; Ableman *v.* Booth, 21 How. 520; 3 Wis. 1.

10 Warner *v.* The Uncle Sam, 9 Cal. 697.

11 Gibbens *v.* Ogden, 9 Wheat. 1; 17 Johns. 438; 4 Johns. Ch. 150; Brown *v.* State, 12 Wheat. 419; Sinnot *v.* Davenport, 22 How. 227; Bank of Commerce *v.* New York, 2 Black, 620; 23 N. Y. 192; 32 Barb. 509.

12 The British Prisoners, 1 Wood. & M. 72; U. S. *v.* New Bedford Bridge, 1 Wood. & M. 449.

**Treaty as supreme law.**—A treaty is a solemn agreement between nations.<sup>1</sup> It binds the nation in the aggregate and all its subordinate authorities and judges of every State.<sup>2</sup> When duly ratified, a treaty is the supreme law<sup>3</sup>—the law of the land.<sup>4</sup> It is to be regarded as equivalent to an act of Congress whenever it operates of itself, without the aid of any legislative provision; and where a treaty and an act of Congress are in conflict, the latest in date must control.<sup>5</sup> Where money is required to be appropriated to carry out a treaty, the concurrence of Congress is required to give it effect.<sup>6</sup> Whether an act of Congress shall prevail over a treaty is a question solely of municipal law, as distinguished from public law.<sup>7</sup> It is supreme only when made in pursuance of that authority which has been conferred upon the treaty-making department, and in relation to subjects over which it has

jurisdiction.<sup>8</sup> What is forbidden by the Constitution cannot be done by treaty.<sup>9</sup> Congress has the power to repeal a law contained in a treaty when it relates to subjects placed under the legislative power.<sup>10</sup> When the terms of a stipulation import a contract, a treaty addresses itself to the political, and not the judicial, department, and Congress must execute it before it becomes a rule of court.<sup>11</sup> No right can be incident to one department which necessarily goes to the suspension of a right incident to another.<sup>12</sup> After a treaty has been executed and ratified, courts cannot go behind it for the purpose of annulling its operation.<sup>13</sup> Federal and State judges are bound to determine any constitution or laws of any State contrary to any treaty null and void.<sup>14</sup> The validity of a treaty is necessary and voluntary. The necessary validity is of a judicial nature, and the voluntary of a political nature.<sup>15</sup> If the Supreme Court has the power to declare a treaty void, it will exercise it only in a clear case.<sup>16</sup> The word "treaty" is applied to Indians as well as to other nations.<sup>17</sup> See Supplement, *post*, 319.

1 Foster *v.* Neilson, 2 Peters, 314; Worcester *v.* State, 6 Peters, 515; Taylor *v.* Morton, 2 Curt. 454.

2 Ware *v.* Hylton, 2 Dall. 199; Marbury *v.* Madison, 1 Cranch, 176; Worcester *v.* Georgia, 6 Peters, 575; Calder *v.* Bull, 3 Dall. 336; Owings *v.* Norwood, 5 Cranch, 343; Satterlee *v.* Matthewson, 2 Peters, 413; *Ex parte* Garland, 4 Wall. 399; Cummings *v.* Missouri, 4 Wall. 329; People *v.* Gerke, 4 Amer. L. R. 604; 6 Op. Att.-Gen. 291; Fellows *v.* Denniston, 23 N. Y. 420.

3 Pollard *v.* Kibbe, 14 Peters, 414; Doe *v.* Branden, 16 How. 635; Wilson *v.* Wall, 34 Ala. 288.

4 Pollard *v.* Kibbe, 14 Peters, 414; Rhode Island *v.* Massachusetts, 12 Peters, 657.

5 Foster *v.* Neilson, 2 Peters, 314; U. S. *v.* Arredondo, 6 Peters, 691; U. S. *v.* Percheman, 7 Peters, 51; Gordon *v.* Kerr, 1 Wash. C. C. 322.

6 Turner *v.* Missionary Union, 5 McLean, 344.

7 Taylor *v.* Morton, 2 Curt. 454.

8 People *v.* Naglee, 1 Cal. 231.

9 Cherokee Tobacco, 11 Wall. 616; 1 Dill. 264; People *v.* Washington, 36 Cal. 653; U. S. *v.* Rhodes, 1 Abb. U. S. 43.

10 Talbot *v.* Seaman, 1 Cranch, 1; Ware *v.* Hylton, 3 Dall. 199; U. S. *v.* Tobacco Fact. 1 Dill. 266; Webster *v.* Reid, 11 How. 437; Morris, 467; Ropes *v.* Clinch, 8 Blatchf. 304; Taylor *v.* Morton, 2 Curt. 434; Scott *v.* Sandford, 19 How. 629; Gray *v.* Clinton Br. 10 Wall. 454; Wool. 150; Cherokee Tobacco, 11 Wall. 621; Ropes *v.* Clinch, 8 Blatchf. 304; Bucker *v.* State, 7 Bank Reg. 257.

11 Foster *v.* Neilson, 2 Peters, 314; U. S. *v.* Ferreira, 13 How. 40; Turner *v.* Missionary Union, 5 McLean, 344; Taylor *v.* Morton, 2 Curt. 454; *In re* Metzger, 1 Park Cr. Cas. 108.

12 Taylor *v.* Morton, 2 Curt. 454; Jones *v.* Walker, 2 Paine, 688; Wilson *v.* Wall, 34 Ala. 288.

- 13 *Fellows v. Blacksmith*, 19 How. 366.
- 14 *Ware v. Hylton*, 3 Dall. 199; *Society v. New Haven*, 8 Wheat. 464.
- 15 *Jones v. Walker*, 2 Paine, 688.
- 16 *Ware v. Hylton*, 3 Dall. 199.
- 17 *Worcester v. Georgia*, 6 Peters. 515; *Turner v. Missionary Union*, 5 McLean, 344; *Fellows v. Denniston*, 23 N. Y. 420.

*3 The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.*

**Oath of office.**—This provision is merely directory, and the omission to take the oath does not affect the validity of their legislation.<sup>1</sup> The pledge required is to support *this* Constitution.<sup>2</sup> The legislature may superadd such other oath of office as its wisdom may suggest.<sup>3</sup> A referee is not such an officer as is required to take this oath.<sup>4</sup> The provisions in a State constitution requiring a test oath are void.<sup>5</sup>

1 *Hill v. Boyland*, 40 Miss. 618. But see *Thomas v. Taylor*, 42 Miss. 651; *White v. McKee*, 19 La. An. 111.

2 *Ableman v. Booth*, 21 How. 525.

3 *McCulloch v. Maryland*, 4 Wheat. 416; *U. S. v. Rhodes*, 1 Abb. U. S. 43.

4 *Underwood v. McDuffie*, 15 Mich. 361.

5 *Ex parte Garland*, 4 Wall. 398; *Andrew v. Bible &c. Socl.* 4 Sand. 156; *Ayers v. M. E. Church*, 3 Sand. 351.

## ARTICLE VII.

## RATIFICATION OF CONSTITUTION.

## SECTION 1.

*What sufficient for ratification.*

*<sup>1</sup>The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.*

NOTE. — The Constitution was ratified by the several States in the following order : Delaware, December 7th, 1787 ; Pennsylvania, December 12th, 1787 ; New Jersey, December 18th, 1787 ; Georgia, January 2nd, 1788 ; Connecticut, January 9th, 1788 ; Massachusetts, February 6th, 1788 ; Maryland, April 28th, 1788 ; South Carolina, May 23rd, 1788 ; New Hampshire, June 21st, 1788 ; Virginia, June 26th, 1788 ; New York, July 26th, 1788 ; North Carolina, November 21st, 1789 ; and Rhode Island, May 29th, 1790.

*Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.*

GEO. WASHINGTON,

*President, and Deputy from Virginia.*

*New Hampshire.*

JOHN LANGDON,  
NICHOLAS GILMAN.

*Connecticut.*

WM. SAMUEL JOHNSON,  
ROGER SHERMAN.

*Massachusetts.*

NATHANIEL GORHAM,  
RUFUS KING.

*New York.*

ALEXANDER HAMILTON.

*New Jersey.*

WILLIAM LIVINGSTON,  
DAVID BREARLEY,  
WILLIAM PATERSON,  
JONATHAN DAYTON.

*Pennsylvania.*

BENJAMIN FRANKLIN,  
THOMAS MIFFLIN,  
ROBERT MORRIS,  
GEORGE CLYMER,  
THOMAS FITZSIMMONS,  
JARED INGERSOLL,  
JAMES WILSON,  
GOUVERNEUR MORRIS.

*Delaware.*

GEORGE READ,  
GUNNING BEDFORD, Jr.,  
JOHN DICKINSON,  
RICHARD BASSETT,  
JACOB BROOM.

*Maryland.*

JAMES McHENRY,  
DANIEL, of ST. THO. JENIFER,  
DANIEL CARROLL.

*Virginia.*

JOHN BLAIR,  
JAMES MADISON, Jr.

*North Carolina.*

WILLIAM BLOUNT,  
RICHARD DOBBS SPAIGHT,  
HUGH WILLIAMSON.

*South Carolina.*

JOHN RUTLEDGE,  
CHARLES C. PINCKNEY,  
CHARLES PINCKNEY,  
PIERCE BUTLER.

*Georgia.*

WILLIAM FEW,  
ABRAHAM BALDWIN.

Attest:

WILLIAM JACKSON, Secretary.

# Amendments

TO THE CONSTITUTION OF THE UNITED STATES, RAT-  
IFIED ACCORDING TO THE PROVISIONS OF THE  
FIFTH ARTICLE OF THE FOREGOING  
CONSTITUTION.

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## ARTICLE I.

### RESTRICTIONS ON POWER OF CONGRESS.

#### SECTION 1.

*Religious liberty—freedom of speech—right of petition.*

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

**Religion.**—This Article, and the clause in the VIth Article, that “no religious test shall ever be required as a qualification” for office, are the only provisions in the Federal Constitution upon the subject of religion; the whole power over the subject is left with the States;<sup>1</sup> nor is there any inhibition placed on the States.<sup>2</sup> The constitutional guaranty of religious freedom applies only to Congress and not to the States;<sup>3</sup> and it takes from Congress the power to legislate in respect to mere religious opinion and belief, but leaves it free to act as to the violation of social duties, and as to peace and good order.<sup>4</sup> Congress has no power to punish for disturbance of public assemblies of peaceable citizens, the preservation of the peace is a prerogative of the several States.<sup>5</sup> These rights existed before the Constitution, and this amendment merely prohibits their abridgment.<sup>6</sup> States may regulate the observance of the Sabbath.<sup>7</sup> See Supplement, *post*, 319.



1 *Ex parte Garland*, 4 Wall. 397.

2 *Permoli v. First Municipality*, 3 How. 609; *Ex parte Garland*, 4 Wall. 399.

3 *U. S. v. Rhodes*, 1 Abb. U. S. 43; *Barron v. Baltimore*, 7 Peters, 243; *Withers v. Buckley*, 20 How. 84; *Murphy v. People*, 2 Cowen, 815.

4 *Reynolds v. U. S.* 7 Am. L. R. 9.

5 *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308.

6 *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308.

7 *Commonwealth v. Has*, 122 Mass. 42; *Specht v. Commonwealth*, 8 Pa. St. 312; *Frolickstein v. Mobile*, 40 Ala. 725; *Ex parte Andrews*, 18 Cal. 678; *Neuendorff v. Duryea*, 69 N. Y. 557.

## ARTICLE II.

### RIGHT TO BEAR ARMS.

#### SECTION 1.

*Right not to be denied to people.*

*A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

**Right to bear arms.**—The right to bear arms is not herein granted, but only protected from infringement.<sup>1</sup> This provision is restrictive only of the powers of the Federal Government;<sup>2</sup> it does not prevent the regulation of the subject by States, as the passage of a law to prevent carrying concealed weapons,<sup>3</sup> or for prescribing punishment for an assault with dangerous weapons;<sup>4</sup> but a statute prohibiting the bearing of arms openly is unconstitutional.<sup>5</sup> This clause is based upon the idea that the people cannot be oppressed or enslaved who are not first disarmed.<sup>6</sup> See Supplement, *post*, 320.

1 *U. S. v. Cruikshank*, 92 U. S. 556; 1 Woods, 308.

2 *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308; *North Carolina v. Newsom*, 5 Ired. 250; *Andrews v. State*, 3 Heisk. 165; *Fife v. State*, 31 Ark. 455.

3 *State v. Buzzard*, 4 Ark. 18; *Nunn v. State*, 1 Ga. 243; *Louisiana v. Chandler*, 5 La. An. 489; *Louisiana v. Smith*, 11 Ibid. 633; *Louisiana v. Jumell*, 13 Ibid. 399; *English v. Texas*, 35 Tex. 473; *Comm. v. McNulty*, 8 Phila. 610; *Bliss v. Comm.* 2 Litt. 90; *Wright v. Comm.* 77 Pa. St. 470. And see *State v. Reid*, 1 Ala. 612; *State v. Mitchell*, 3 Blackf. 229; *Cochran v. State*, 24 Tex. 394.

4 *Cockran v. State*, 24 Tex. 394; *New York v. Miln*, 11 Peters, 139.

5 *Nunn v. State*, 1 Ga. 243.

6 *Cockran v. State*, 24 Tex. 401.

## ARTICLE III.

### QUARTERING OF SOLDIERS.

#### SECTION 1.

*No soldier to be quartered, etc.*

*No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

## ARTICLE IV.

### PERSONAL SECURITY.

#### SECTION 1.

*Unreasonable searches, seizures, and warrants prohibited.*

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

*Amendment, proposed 25th of September, 1789; ratified 15th December, 1791.*

**Search, seizure, and warrants.**— This amendment was adopted with intent to restrict and limit the power of the United States,<sup>1</sup> and place the powers under strong prohibitions and checks.<sup>2</sup> The security of personal liberty was such as wisdom and experience demonstrated to be necessary.<sup>3</sup> The amendment only protects those who are parties to the Constitution,<sup>4</sup> and applies to criminal cases only.<sup>5</sup> So, provisions for searches and seizures to aid in the collection of revenue are not repugnant to this clause.<sup>6</sup> It does not prohibit a search or seizure made in attempting to execute a military order;<sup>7</sup> but an order of the War Department directing an arrest without warrant is void.<sup>8</sup> A warrant of commitment which does not state some good cause certain, supported by an oath, is illegal;<sup>9</sup> but an executive officer can justify his acts by showing a regular warrant, without showing that it was founded on a complaint under oath. It is only necessary that the

order or precept shall be lawful on the face of it.<sup>10</sup> A warrant directing a search in the house of A & Co. will not justify a search in the house of A.<sup>11</sup> A specification of the character, quality, number, weight, or other circumstances, to distinguish the goods, is necessary.<sup>12</sup> "And no warrants shall issue but upon probable cause" refers only to process issued under the authority of the United States.<sup>13</sup> It has no application to proceedings for the recovery of debts.<sup>14</sup> See Supplement, *post* 320.

1 Luther v. Borden, 7 How. 66; Smith v. Maryland, 1 How. 71.

2 Green v. Biddle, 8 Wheat. 83; Luther v. Borden, 7 How. 66; Payne v. Baldwin, 3 Smedes & M. 673.

3 Ex parte Milligan, 4 Wall. 120.

4 Commonwealth v. Griffith, 19 Mass. 11.

5 Ex parte Meador, 1 Abb. U. S. 317; Murray v. Hoboken &c. Co. 18 How. 272.

6 Ex parte Meador, 1 Abb. U. S. 317; Stanwood v. Green, 2 Ibid. 184; Matt. of Platt, 7 Ben. 261; 19 Int. Rev. Rec. 132; U. S. v. Distillery, 8 Chic. L. N. 47; Ex parte Strouse, 1 Sawy. 605.

7 Allen v. Colby, 45 N. H. 544.

8 Ex parte Field, 5 Blatchf. 63.

9 Ex parte Burford, 3 Cranch, 448; Anonymous, 2 Op. Att.-Gen. 286.

10 Sanford v. Nichols, 13 Mass. 286.

11 Sanford v. Nichols, 13 Mass. 286.

12 Sanford v. Nichols, 13 Mass. 286.

13 Smith v. Maryland, 1 How. 71.

14 Ex parte Burford, 3 Cranch, 448; Murray v. Hoboken L. & I. Co. 18 How. 272; Ex parte Milligan, 4 Wall. 119; Wakely v. Hart, 6 Binu. 316; Bell v. Clapp. 10 Johns. 263; Salliey v Smith, 11 Johns. 509.

## ARTICLE V.

### PERSONAL RIGHTS.

#### SECTION 1.

*Rights of parties accused of crime—rights as to property.*

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against*

*himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

**Construction.**—The prohibitions in this article are exclusively restrictions upon the Federal powers to prevent interference with the rights of States and their citizens.<sup>1</sup> The words “infamous crime” are descriptive of an offense that subjects the person to infamous punishment, or prevents his being a witness.<sup>2</sup> Misdemeanors cannot be brought within the term “infamous.”<sup>3</sup> As respects offenses, not capital and not infamous, there is no restriction upon Congress as to the mode of procedure.<sup>4</sup> An indictment must be found by a grand jury; an information may be preferred by an officer of the court.<sup>5</sup> A grand jury is a body of men varying from twelve to twenty-three, who, in secret, hear the evidence offered by the Government only, and find or ignore bills of indictment.<sup>6</sup> This clause relates to time of war as well as peace.<sup>7</sup> “When in actual service in time of war or public danger” refers to the militia;<sup>8</sup> it cannot be extended in time of war on a plea of public danger.<sup>9</sup> Cases arising in the land and naval forces, etc., are excepted from presentment and indictment and right of trial by jury.<sup>10</sup> An offense committed by a party while actually in the naval service is a “case arising in the naval forces.”<sup>11</sup> And a paymaster’s clerk on duty in the navy is a person “in the naval forces.”<sup>12</sup> The power to punish military and naval officers is distinct from the power to define judicial powers,<sup>13</sup> and the power of Congress to provide for the Government of the land and naval forces is not affected or limited by this article;<sup>14</sup> but a military commission for the trial of persons not in the military service is unconstitutional.<sup>15</sup> A court-martial is a lawful tribunal under the Constitution,<sup>16</sup> but if it had no jurisdiction, or should inflict punishment forbidden by law, the civil courts could inquire into the jurisdiction and give redress.<sup>17</sup> This article creates no new principles, but is simply declarative of great fundamental principles.<sup>18</sup> See Supplement, *post*, 320.

1 *Barron v. Baltimore*, 7 Peters, 243; *Livingston v. Moore*, 7 Peters, 469; *Fox v. Ohio*, 5 How. 410; *Withers v. Buckley*, 10 How. 84; *Clark v. Dick*, 1 Dill. 8; *Bonaparte v. Camden and A. R. R. Co.* Bald. 229; *Murphy v. People*, 2 Cow. 815; *Barker v. People*, 3 Cow. 636; *Boring v. Williams*, 17 Ala. 516; *Jackson v. Wood*, 2 Cow. 819; *Railroad Co. v. Davis*, 2 Dev. & B. 451; *James v. Commonwealth*, 12 Serg. & R. 229; *Hollister v. Union Co.* 9 Conn. 436; *Powers v. Dougherty*, 23 Ga. 65; *Boyd v. Ellis*, 11 Iowa, 97; *State v. Jackson*, 21 La. Ann. 574; *Weimer v.*

Banbury, 30 Mich. 201; Concord R. R. v. Greely, 17 N. H. 47; Prescott v. State, 19 Ohio St. 184; State v. Shumpert, 1 Rich. N. S. 85; Griffing v. Gibb, McCall. 220; Twitchell v. Comm. 7 Wall. 321; State v. Webb, 46 Iowa, 662.

2 U. S. v. Sheppard, 1 Abb. U. S. 431; U. S. v. Block, 9 Ch. L. N. 234; U. S. v. Maxwell, 3 Dill. 275; 21 Int. Rev. Rec. 148; U. S. v. Waller, 1 Sawy. 701.

3 U. S. v. Elbert, 1 Cent. L. J. 205.

4 U. S. v. Maxwell, 3 Dill. 275; 21 Int. Rev. Rec. 148.

5 Clepper v. State, 4 Tex. 244.

6 People v. King, 2 Caines' Cas. 98; Commonwealth v. Ward, 2 Cush. 149.

7 In re Kemp, 16 Wis. 359.

8 In re Bogart, 2 Sawy. 406.

9 Ex parte Milligan, 4 Wall. 123.

10 Ex parte Milligan, 4 Wall. 123.

11 In re Bogart, 2 Sawy. 406.

12 In re Bogart, 2 Sawy. 406.

13 Dynes v. Hoover, 20 How. 78; In re Bogart, 2 Sawy. 401.

14 In re Bogart, 2 Sawy. 406.

15 Milligan v. Hovey, 3 Biss. 18; In re Bogart, 2 Sawy. 402; Ex parte Field, 5 Blatchf. 79.

16 In re Bogart, 2 Sawy. 406.

17 Marshall's Case, 10 Cranch, 76; Dynes v. Hoover, 20 How. 82.

18 Young v. McKenzie, 3 Ga. 31; Campbell v. State, 11 Ga. 353.

**Jeopardy.**—A prisoner is not once put in jeopardy until the verdict of the jury is rendered for or against him,<sup>1</sup> and twice in jeopardy does not relate to a mistrial,<sup>2</sup> nor when the jury is discharged from necessity, or the ends of justice would be defeated,<sup>3</sup> as where one of the jury becomes insane,<sup>4</sup> or is attacked with a sudden illness,<sup>5</sup> or if a juror is so biased that he is unfit to sit on the case,<sup>6</sup> or where the jury fail to agree,<sup>7</sup> or where they do not agree on the last day of the term.<sup>8</sup> Jeopardy attaches where the verdict of guilty is rendered, and judgment is arrested for want of arraignment and plea.<sup>9</sup> The court may, in its discretion, discharge the jury in a capital case as well as in a case of misdemeanor.<sup>10</sup> Where the jury is empaneled and sworn by inadvertence before an argument, the proceeding may be disregarded, and a jury empaneled in regular order.<sup>11</sup> Where the jury was discharged on account of the absence of witnesses, it does not prevent a subsequent trial.<sup>12</sup> Where the indictment on demurrer is held bad, the prisoner may be remanded for further proceedings.<sup>13</sup> The provision is intended to shield the prisoner from a second trial, except at his election and request, which is manifested by his applica-

tion for a new trial.<sup>14</sup> If the District Attorney enters a *nolle prosequi* after the jury is empaneled and sworn, the accused cannot be again indicted for the same offense<sup>15</sup> if the court had jurisdiction.<sup>16</sup> Where either a fine or imprisonment can be imposed, the court cannot, after payment of the fine, render a new judgment of imprisonment.<sup>17</sup> This constitutional right may be waived.<sup>18</sup>

1 U. S. v. Perez, 9 Wheat. 579; U. S. v. Haskell, 4 Wash. C. C. 402; People v. Goodwin, 18 Johns. 187; Hoffman v. State, 20 Md. 425; State v. Moor, Walk. 134; Commonwealth v. Merrill, Thach. C. C. 1.

2 U. S. v. Haskell, 4 Wash. C. C. 410.

3 U. S. v. Perez, 9 Wheat. 579; U. S. v. Gilbert, 2 Sum. 19; Commonwealth v. Cook, 6 Serg. & R. 577; U. S. v. Wilson, Bald. 95; U. S. v. Kerry, 1 McLean, 434.

4 U. S. v. Haskell, 4 Wash. C. C. 402.

5 Commonwealth v. Merrill, Thach. C. C. 1.

6 U. S. v. Norris, 1 Curt. 23.

7 U. S. v. Perez, 9 Wheat. 579; People v. Goodwin, 18 Johns. 187.

8 State v. Moor, Walk. 134.

9 State v. Parish, 43 Wis. 395. And see State v. Norvell, 2 Yerg. 24.

10 U. S. v. Haskell, 4 Wash. C. C. 402.

11 U. S. v. Riley, 5 Blatchf. 204.

12 Hoffman v. State, 20 Md. 425. And see U. S. v. Watson, 3 Ben. 1.

13 U. S. v. Townmaker, Hemp. 299. See Supplement, *post*, 320.

14 U. S. v. Williams, 1 Cliff. 5; U. S. v. Keen, 1 McLean, 434; U. S. v. Connor, 3 McLean, 573; U. S. v. Macomb, 5 McLean, 286; U. S. v. Harding, 1 Wall. Jr. 127.

15 U. S. v. Shoemaker, 2 McLean, 114.

16 Thompson v. State, 6 Neb. 107; Commonwealth v. Peters, 53 Mass. 387; State v. Odell, 4 Blackf. 156.

17 Ex parte Lange, 18 Wall. 170. But see Brown v. Swineford, 44 Wis. 282. See *post*, 320.

18 Veatch v. State, 60 Ind. 291.

**Witness.**—The provision as to a party not being a witness against himself applies only to criminal cases.<sup>1</sup> Forcing a man to be a witness against himself is contrary to the principles of a republican government.<sup>2</sup> The words "criminal case" mean a case involving punishment for crime in an ordinary criminal proceeding,<sup>3</sup> or on a charge of misconduct against a public officer.<sup>4</sup>

1 Ex parte Meador, 1 Abb. U. S. 317; Ex parte Strause, 1 Sawy. 605; In re Phillips, 10 Int. Rev. Rec. 107.

2 Wyneham v. People, 13 N. Y. 392.

3 U. S. v. Distillery, 8 Chic. L. N. 57; U. S. v. Parker, 21 Int. Rev. Rec. 251.

4 U. S. v. Collins, 1 Woods, 499.

**Depriving of life, liberty, or property.**—This amendment simply declares the great common-law principle as to personal rights, applicable to both State and Federal Governments.<sup>1</sup> The right to life includes the right to the body in its completeness and without dismemberment; to liberty—the right to exercise the faculties and follow lawful avocations; to property—the right to acquire, possess, and enjoy it in any way consistent with the equal rights of others and the just demands of the State.<sup>2</sup> No person can be deprived of his liberty on the ground of neglect to assert his rights.<sup>3</sup> This section prohibits an act authorizing the arrest of a citizen without just cause;<sup>4</sup> yet a rebel in battle may be slain or captured, and thus deprived of his liberty;<sup>5</sup> but a statute which makes an order of the President a sufficient defense for an act personally done, is void.<sup>6</sup> A law which authorizes commitment, as an inebriate to a lunatic asylum, on an *ex parte* affidavit, violates this provision.<sup>7</sup> This section was intended as a constitutional safeguard in the trial of those cases for which it was stipulated the courts shall remain open, and those wherein a party shall have his remedy by due course of law.<sup>8</sup> Legislative authority cannot reach life, liberty, or property, except for crime, or when the sacrifice is demanded by a just regard for the public welfare.<sup>9</sup> The right to acquire, hold, and enjoy property is guaranteed by the fundamental law.<sup>10</sup> All property is held under the implied liability that its use shall not be injurious to others.<sup>11</sup> A party is protected in the enjoyment of all property, whether real or personal,<sup>12</sup> including the right to the use of a patented machine.<sup>13</sup> The legislature has no power to take property from one individual and give it to another.<sup>14</sup> See Supplement, *post*, 321.

1 *Young v. McKenzie*, 3 Ga. 42; *Parkham v. Justice*, 9 Ga. 341; *Ervine's Appeal*, 16 Pa. St. 256.

2 *Bertholf v. O'Reilly*, 18 Am. L. Reg. N. S. 115.

3 *Allen v. Sarah*, 2 Har. 434.

4 *Griffin v. Wilcox*, 21 Ind. 370.

5 *Norris v. Doniphan*, 4 Met. (Ky.) 385.

6 *Johnson v. Jones*, 44 Ill. 142.

7 *In re Janes*, 30 How. Pr. 446.

8 *Bonaparte v. Camden &c. R. R. Co.* Bald. 220; *Mason v. Kennebec &c. R. R. Co.* 31 Mo. 215; *Stevens v. Middlesex Canal*, 12 Mass. 465; *Stowell v. Flagg*, 11 Mass. 364; *Aldrich v. Cheshire &c. R. R. Co.* 21 N. H. 359; *Beekman v. Saratoga &c. R. R. Co.* 3 Paige, 45; *B. B. &c. R. R. Co. v. Ferris*, 26 Tex. 588; *Wheelock v. Young*, 4 Wend. 647; *Bloodgood v. Mohawk &c. R. R. Co.* 14 Wend. 51.

9 *Atchison &c. R. R. Co. v. Baty*, 6 Neb. 37; *Taylor v. Porter*, 4 Hill, 146; *Wilkinson v. Leland*, 2 Peters, 653.

- 10 Commonwealth v. Bacon, 13 Bush, 214.
- 11 Commonwealth v. Alger, 7 Cush. 84; Bertholf v. O'Reilly, 18 Am. L. Reg. N. S. 120; Comm. v. Bacon, 13 Bush, 214.
- 12 Ervine's Appeal, 16 Pa. St. 256.
- 13 Bloomer v. McQuewan, 14 How. 539.
- 14 Turner v. Althaus, 6 Neb. 54.

Due process of law means such an exertion of the powers of government as the settled maxims of the law permit and sanction.<sup>1</sup> It simply requires that a person should be brought into court and have an opportunity to prove any fact for his protection.<sup>2</sup> It means law in its regular course of administration through courts of justice<sup>3</sup>—a timely and regular proceeding to judgment and execution.<sup>4</sup> It generally implies and includes parties, judge, regular allegations, and a trial according to some settled course of judicial proceedings;<sup>5</sup> a legal proceeding under direction of a court;<sup>6</sup> intending to secure the right of trial according to the forms of law;<sup>7</sup> the law of the land;<sup>8</sup> a present existing rule, and not an *ex post facto* law;<sup>9</sup> a law existing at the time of the vesting of rights.<sup>10</sup> That it means a trial according to some settled course of procedure is not universally true.<sup>11</sup> It does not necessarily import a jury trial,<sup>12</sup> but includes summary remedies.<sup>13</sup> Civil proceedings for contempt are not included.<sup>14</sup> A statute making the property-owner liable for damages resulting from the illegal use of property by a tenant is valid.<sup>15</sup> An assessment for grading and improving streets is not a taking of property without compensation, or without due process of law.<sup>16</sup> Private property may be taken by a commander in war in case of exigency, but the case must be urgent.<sup>17</sup> Provisions for searches and seizures to aid in the collection of the revenue are not repugnant to this amendment.<sup>18</sup> So, processes for seizure and assessment are within the discretion of the legislature,<sup>19</sup> but Congress has no power to provide for the absolute forfeiture of land as a penalty for the non-payment of taxes, without any process.<sup>20</sup> A confiscation act does not authorize seizure and confiscation without due process of law.<sup>21</sup> Congress has no power to organize a board of revision to nullify confirmed titles.<sup>22</sup> A trial before a board of election officers is not due process of law.<sup>23</sup> By "without due process of law" is meant all the guarantees set forth in the sixth amendment.<sup>24</sup> See Supplement, *post*, 321.

1 Bertholf v. O'Reilly, 18 Am. L. Reg. N. S. 119; *Ex parte Ah Fook*, 49 Cal. 402.

2 *People v. Essex Co.* 70 N. Y. 223.



3 *Barker v. Kelly*, 11 Minn. 490; *Rowan v. State*, 30 Wis. 129; *State v. Becht*, 23 Minn. 413.

4 *Dwight v. Williams*, 4 McLean, 586.

5 *Murray v. Hoboken &c. Co.* 18 How. 272; *Huber v. Reilly*, 53 Pa. St. 112; *Rees v. City of Watertown*, 19 Wall. 122; *Westervelt v. Greg*, 12 N. Y. 202.

6 *Newcomb v. Smith*, 1 Chand. 71.

7 *Parsons v. Russell*, 11 Mich. 113.

8 *Matt. of Meador*, 1 Abb. U. S. 331; *Murray v. Hoboken &c. Co.* 13 How. 272; *James v. Reynolds*, 2 Tex. 251.

9 *Ho Ko v. Henderson*, 4 Dev. 15; *Taylor v. Porter*, 4 Hill. 143; *Wynehamer v. People*, 13 N. Y. 373; *Norman v. Helst*, 5 Watts & S. 171; *Murray v. Hoboken &c. Co.* 13 How. 272.

10 *Wilkinson v. Leland*, 2 Peters. 653; *Osborn v. Nicholson*, 13 Wall. 662; *Taylor v. Porter*, 4 Hill. 143; *Wynehamer v. People*, 13 N. Y. 378.

11 *Greene v. Briggs*, 1 Curt. 311; *Murray v. Hoboken &c. Co.* 13 How. 272; *Hoke v. Henderson*, 4 Dev. 15; *Taylor v. Porter*, 4 Hill. 143; *Van Zandt v. Waddel*, 2 Yerg. 260; *State Bank v. Cooper*, 2 Yerg. 539; *Jones v. Perry*, 13 Yerg. 59.

12 *Ex parte Meador*, 1 Abb. U. S. 317.

13 *Martin v. Mott*, 12 Wheat. 19; *U. S. v. Ferreira*, 13 How. 40; *Ex parte Meador*, 1 Abb. U. S. 317; *Murray v. Hoboken &c. Co.* 13 How. 272.

14 *State v. Becht*, 23 Minn. 411.

15 *Bertholf v. O'Reilly*, 18 Am. Law Reg. N. S. 124; *Dobbins v. U. S.* 16 U. S. 355.

16 *Griffin v. Mayor*, 4 N. Y. 419.

17 *Mitchell v. Harmony*, 13 How. 115. And see *Ex parte Milligan*, 4 Wall. 2; *Clark v. Mitchell*, 64 Mo. 564.

18 *Matt. of Platt*, 7 Ben. 261; 19 Int. Rev. Rec. 132; *Murray v. Hoboken &c. Co.* 13 How. 272; *Ames v. Port Huron &c. Co.* 11 Mich. 139.

19 *Pullan v. Kinsinger*, 2 Abb. U. S. 54; *Davidson v. New Orleans*, 96 U. S. 57.

20 *Martin v. Snowden*, 13 Gratt. 100.

21 *Hodgson v. Millward*, 3 Grant, 406.

22 *Reichart v. Felps*, 6 Wall. 160.

23 *Huber v. Reilly*, 53 Pa. St. 112.

24 *James v. Reynolds*, 2 Tex. 251; *Jones v. Montes*, 15 Tex. 353.

**Eminent domain.**—The power of the Government respecting public improvements is a sovereign power, resting in the discretion of Congress.<sup>1</sup> Under the police power, persons and property are subject to all kinds of restrictions and burdens to secure general comfort, health, and prosperity.<sup>2</sup> This power of eminent domain is not impaired by the Constitution.<sup>3</sup> The terms in the Constitution are declaratory and not restrictive.<sup>4</sup> Where there is an apparent public interest to be subserved, the legislature, or person or body it may designate, is the proper judge of the necessity.<sup>5</sup> Governments more frequently effect these objects through the aid of corporations than

by their immediate agents.<sup>6</sup> Private property embraces all private property,<sup>7</sup> including franchises.<sup>8</sup> Any injury to the property is a taking within the meaning of this provision,<sup>9</sup> as an interruption to the use of property.<sup>10</sup> Where the law strips property of its attribute the owner is within this provision.<sup>11</sup> This provision refers only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power.<sup>12</sup> The power to take private property is limited to purposes for public uses.<sup>13</sup> It is not a limitation on the taxing power, but on the power of eminent domain.<sup>14</sup> Public use means a use concerning the whole community as distinguished from particular individuals.<sup>15</sup> The legislature cannot take private property for purely private uses;<sup>16</sup> so, a tax law in aid of a private enterprise and business is void.<sup>17</sup> A railroad company cannot condemn a site for the erection of manufactories of railroad cars;<sup>18</sup> but a statute authorizing the taking of private property for mill sites and dams is valid.<sup>19</sup> Extraordinary and unforeseen occasions arise in cases of impending danger when private property may be appropriated to the public use, but the emergency must be extreme and imperative.<sup>20</sup> If movable property is taken in good faith by a military commander, the title vests in Government, although it was subsequently discovered not to have been actually necessary;<sup>21</sup> the courts cannot interfere with such acts.<sup>22</sup> Every attempt of a public officer to take private property for public use, unless justified by some pressing necessity, is a simple trespass, for which the Government is not responsible.<sup>23</sup> The power to appropriate land or other property within the States for its own use belongs exclusively to the Federal Government, and can in no wise be affected by the State legislature.<sup>24</sup> Courts may determine a use is a public use, but not the extent to which property may be taken.<sup>25</sup>

1 *Avery v. Fox*, 1 Abb. U. S. 246; *Swan v. Williams*, 2 Mich. 427.

2 *Thorpe v. Rutland & R. R. B. Co.* 27 Vt. 140; *Slaughter-House Cases*, 16 Wall. 35; *Munn v. Illinois*, 94 U. S. 123; *Bertholf v. O'Reilly*, 18 Am. Law Reg. 121.

3 *Dyer v. Tuscaloosa Br. Co.* 2 Port. 236; *West Riv. Br. Co. v. Dix*, 6 How. 539.

4 *Young v. McKenzie*, 3 Ga. 31.

5 *Newcomb v. Smith*, 1 Chand. 71.

6 *Ches. & O. Com. Co. v. Key*, 3 Cranch C. C. 599; *Balt. & O. R. R. Co. v. Van Ness*, 4 Cranch C. C. 593; *Swan v. Williams*, 2 Mich. 427.

7 *Murray v. Hoboken &c. Co.* 18 How. 272; *U. S. v. Harding*, 1 Wall. Jr. 127.

8 *West Riv. Br. Co. v. Dix*, 6 How. 507; *Wilkinson v. Leland*, 2 Peters, 658; *Charles Riv. Br. v. Warren Br.* 11 Peters, 646; *Bonaparte v. Cam-*

den &c. R. R. Co. Bald. 205; Enfield Br. Co. v. Hartford &c. R. R. Co. 17 Conn. 40; Lexington & O. R. R. Co. v. Applegate, 8 Dana, 239; Tuckahoe Co. v. Railroad Co. 11 Leigh, 42; Piscataqua &c. Br. v. N. H. Br. 7 N. H. 35; Barber v. Andover, 8 N. H. 398; Pierce v. Somersworth, 10 N. H. 370; Backus v. Lebanon, 11 N. H. 20; Varick v. Smith, 5 Paige, 146; Dyer v. Tuscaloosa Br. Co. 2 Port. 296; Boston W. P. Co. v. Boston &c. R. R. Corp. 40 Mass. 360; L. &c. R. R. Co. v. Chappell, 1 Rice, 383; Armington v. Barnet, 15 Vt. 745; West Riv. Br. Co. v. Dix, 16 Vt. 446; Bloodgood v. M. &c. R. R. Co. 18 Wend. 14.

9 Pumpelly v. Green Bay Co. 13 Wall. 180; Pratt v. Brown, 3 Wis. 613; Walker v. Shepardson, 4 Ibid. 511; Goodall v. Milwaukee, 5 Wis. 39; Weeks v. Milwaukee, 10 Wis. 242; Fisher v. Horicon Iron Co. Ibid. 353; Newell v. Smith, 15 Wis. 104. But see Alexander v. Milwaukee, 16 Wis. 248.

10 Pumpelly v. Green Bay Co. 13 Wall. 166; Munn v. Illinois, 94 U. S. 144.

11 Wynehamer v. People, 13 N. Y. 378.

12 Legal Tender Cases, 12 Wall. 457.

13 U. S. v. Chicago, 7 How. 195; U. S. v. Ames, 1 Wood. & M. 76.

14 Gilmer v. Shellenberger, 2 Black, 510.

15 Gilmer v. Lime Point, 18 Cal. 229; Heyneman v. Blake, 19 Cal. 579. See People v. Kerr, 3 Barb. 357.

16 Consol. Chan. Co. v. Cent. Pac. R. R. Co. 51 Cal. 263; Newcomb v. Smith, 1 Chand. 71. But see Ex parte Barnard, 4 Cranch C. C. 294.

17 Pumpelly v. Green Bay Co. 13 Wall. 177; Bertholf v. O'Reilly, 18 Am. Law Reg. N. S. 116; Wynehamer v. People, 13 N. Y. 378; Weisner v. Vill. of Douglass, 64 N. Y. 92.

18 Eldridge v. Smith, 34 Vt. 484.

19 Newcomb v. Smith, 1 Chand. 71.

20 U. S. v. Russell, 13 Wall. 623; Taylor v. Railroad Co. 6 Cold. 646; as in case of military necessity—Clark v. Mitchell, 64 Mo. 564; or in case of a conflagration—Bishop v. City of Macon, 7 Ga. 200.

21 Taylor v. R. R. Co. 6 Cold. 646; Williams v. Wickerman, 44 Mo. 434.

22 Newcomb v. Smith, 1 Chand. 71.

23 Pitcher v. U. S. 1 Nott. & H. 7.

24 Kohl v. U. S. 91 U. S. 367; Trombley v. Humphrey, 23 Mich. 471; Darlington v. U. S. 33 Leg. Int. 409. But see Gilmer v. Lime Point, 18 Cal. 229; Burt v. Merchants' Ins. Co. 106 Mass. 356.

25 St. Louis Co. Court v. Griswold, 58 Mo. 175.

See Supplement, *post*, 322.

**Compensation on condemnation.**—The Constitution does not recognize any necessity as authority for taking property for public use without compensation,<sup>1</sup> even on the rightful taking of property for public use or destruction by a military officer;<sup>2</sup> but the power to confiscate the property of public enemies is not affected by the restrictions of this amendment.<sup>3</sup> Private property cannot be taken for public use without just compensation.<sup>4</sup>

There must be a condemnation or an agreement consummated.<sup>5</sup> The actual occupant of vacant land is entitled to damages, even where it is taken under an act of Congress.<sup>6</sup> So, the rights of owners to adjacent streets is as much property as the lots they own.<sup>7</sup> Congress cannot authorize a telegraph company to construct its lines over private property without just compensation.<sup>8</sup> In the exercise of its power over post-offices and post-wards, Congress cannot take property without the consent of the owner, or a just compensation;<sup>9</sup> nor, in improving navigation, can it divert waters from their natural channel without compensation to riparian owners.<sup>10</sup> The making of compensation must be as absolutely certain as that the property is taken.<sup>11</sup> Just compensation means just in regard to the public as well as to the individual,<sup>12</sup> the means of ascertaining which is to be in the discretion of Congress.<sup>13</sup> If the congressional act provides a special tribunal, no other can be resorted to.<sup>14</sup> The advantage to land not taken cannot be set off against its intrinsic value.<sup>15</sup> See Supplement, *post*, 322.

1 *Norris v. Doniphan*, 4 Met. (Ky.) 335; *Corblin v. Marsh*, 2 Duvall, 193.

2 *Grant v. U. S.* 1 Ct. Cl. 41; 2 *Ibid.* 531; *Wiggins v. U. S.* 3 Ct. Cl. 412.

3 *Miller v. U. S.* 11 Wall. 263.

4 *Barron v. Baltimore*, 7 Peters, 243; *Bucker v. State*, 7 Bank. Reg. 262; *Case of De Groot*, 9 Op. Att.-Gen. 431; *Young v. McKenzie*, 3 Ga. 31; *Danville &c. R. R. Co. v. Comm.* 73 Pa. St. 29.

5 *Whitman v. Boston &c. R. R. Co.* 85 Mass. 138.

6 *California &c. R. R. Co. v. Gould*, 21 Cal. 254.

7 *Lackland v. North. Mo. R. R. Co.* 31 Mo. 180.

8 *Atlantic & Pac. Tel. Co. v. Chicago &c. R. R. Co.* 6 Biss. 158.

9 *Dickey v. Turnp. Co.* 7 Dana, 119.

10 *Avery v. Fox*, 1 Abb. U. S. 243.

11 *Young v. Harrison*, 6 Ga. 130; *Carr v. Georgia &c. R. R. Co.* 1 Kelly, 524; *Miller v. Craig*, 3 Stock. 106; *Buffalo &c. R. R. Co. v. Ferris*, 26 Tex. 538; *Bloodgood v. Mohawk &c. R. R. Co.* 18 Wend. 9.

12 *Chesapeake & O. Can. Co. v. Key*, 3 Cranch C. C. 599.

13 *Chesapeake & O. Can. Co. v. Key*, 3 Cranch C. C. 599; *Swan v. Williams*, 2 Mich. 427; *Mann v. Illinois*, 94 U. S. 113; 69 Ill. 80.

14 *Meade v. U. S.* 2 Ct. Cl. 224.

15 *People v. Mayor of Brooklyn*, 6 Barb. 309; *Jacob v. Louisville*, 9 Dana, 114; *Rogers v. Railroad Co.* 3 Me. 310; *Iwale v. Baltimore*, 5 Md. 314; *Buffalo &c. R. R. Co. v. Ferris*, 26 Tex. 538; *Hatch v. Vermont Cent. R. R. Co.* 25 Vt. 40; *State v. Miller*, 3 Zab. 333.

## ARTICLE VI.

## MODE OF TRIAL IN CRIMINAL PROCEEDING.

## SECTION 1.

*Accused entitled to speedy trial; to confront witnesses; to have counsel; place of trial, etc.*

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

**These prohibitions** are exclusively restrictive on the Federal powers, to prevent interference with the rights of States and their citizens;<sup>1</sup> it does not apply to acts of the legislatures of the several States,<sup>2</sup> though it applies to the case of offenses committed within the limits of the State.<sup>3</sup> This article does not apply to the power to confiscate the property of public enemies,<sup>4</sup> nor to a proceeding to annul the license of a pilot for neglect of duty.<sup>5</sup> The exception as to trial by military and naval courts, expressed in the Fifth Amendment, governs this amendment by implication.<sup>6</sup> The guaranty of the right of trial by jury is intended for a state of war as well as for a state of peace, and is equally binding on rulers and people.<sup>7</sup> The indictment must set forth the offense with clearness and certainty.<sup>8</sup> Where the accused wrongfully kept away the witnesses, he waives his right to be confronted by them;<sup>9</sup> so, where he admits that absent witnesses will testify to the facts set forth in the affidavit produced on behalf of the United States.<sup>10</sup> The jury are not constituted judges of the law in criminal cases.<sup>11</sup> See Supplement, *post*, 323.

1 *Barron v. Baltimore*, 7 Peters, 243; *Fox v. Ohio*, 5 How. 410.

2 *Twitchell v. Commonwealth*, 7 Wall. 321; *Murphy v. People*, 2 Cow. 815; *Jackson v. Wood*, 2 Cowen, 819; *Campbell v. State*, 11 Ga. 353; *Gullote v. New Orleans*, 12 La. An. 432; *Ex parte Smith*, 10 Wend. 443; *Walker v. Sauvinet*, 92 U. S. 90.

3 *U. S. v. Dawson*, 15 How. 467.

4 *Miller v. U. S.* 11 Wall. 268.

5 *Low v. Commissioners*, R. M. Charl. 302.

6 *Ex parte Milligan*, 4 Wall. 123; *In re Bogert*, 2 Sawy. 402.

- 7 *Ex parte Milligan*, 4 Wall. 119.
- 8 *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 303.
- 9 *Reynolds v. U. S.* 7 Am. L. R. 9.
- 10 *U. S. v. Sacramento*, 2 Mont. 239.
- 11 *U. S. v. Morris*, 1 Curt. 23; *U. S. v. Shive*, Bald. 510; *U. S. v. Battiste*, 2 Sum. 243; *Townsend v. State*, 2 Blackf. 151; *Pierce v. State*, 5 How. 504; 13 N. H. 336; *Commonwealth v. Porter*, 51 Mass. 268; *Montee v. Comm.* 3 J. J. Marsh. 150.

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## ARTICLE VII.

### TRIAL BY JURY.

#### SECTION 1.

##### *Right of, in civil actions.*

*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

**Trial by jury.**—This provision relates to trials in the United States courts, and not to trials in State courts.<sup>1</sup> It does not extend to suits against the Government.<sup>2</sup> The restriction is general and applies to all the departments of Government alike,<sup>3</sup> the governor as much as any other department,<sup>4</sup> and to the legislative and judiciary of the Territories,<sup>5</sup> and to tribunals established under a provisional government.<sup>6</sup> The phrase "common law" is used in contradistinction to equity, admiralty, and maritime jurisdiction, and embraces all suits at common law, whatever may be their peculiar form, brought to settle legal rights.<sup>7</sup> The "trial by jury" means a trial by a tribunal of twelve men acting only upon a unanimous determination; hence, a territorial statute allowing a verdict upon agreement of three-fourths of the jury is void;<sup>8</sup> but it does not prevent such legislature from extending the right to cases involving less than twenty dollars.<sup>9</sup> The benefit of the right herein secured may be waived, but the act of waiver should be plain and explicit.<sup>10</sup> The inhibition contained in this article refers to suits at common law alone, and not suits in admiralty, although the courts of common law have a concurrent jurisdiction,<sup>11</sup> in which suits in admiralty the trial is never by jury,<sup>12</sup> nor does the provision embrace the established exclusive jurisdic-

tion of courts of equity,<sup>13</sup> nor to a proceeding under statutory provisions and forms specially provided;<sup>14</sup> as to an examination of a claim under a fugitive slave law,<sup>15</sup> or a proceeding to assess damages.<sup>16</sup> See *post*, 324.

1 *Livingston v. Moore*, 7 Peters, 469; *Fox v. Ohio*, 5 How. 434; *Justices v. Murray*, 9 Wall. 274; *Edwards v. Elliott*, 21 Wall. 532; *Walker v. Sauvinet*, 92 U. S. 92; 27 La. An. 14; *Boring v. Williams*, 17 Ala. 510; *Dawson v. Shaver*, 1 Blackf. 204; *Colt v. Eves*, 12 Conn. 243; *Foster v. Jackson*, 57 Ga. 206; *Railroad Co. v. Heath*, 9 Ind. 553; *State v. Keyes*, 8 Vt. 57; *Huntington v. Bishop*, 5 Vt. 186; *Livingston v. Mayor*, 8 Wend. 85; *Lee v. Tillotson*, 24 Wend. 337.

2 *McElrath v. U. S.* 12 Ct. Cl. 312.

3 *Kleinschmidt v. Dunphy*, 1 Mont. 118.

4 *Claim of Reside*, 9 Op. Att.-Gen. 200.

5 *Webster v. Reld*, 11 How. 437; *Morris*, 437; *Whallon v. Bancroft*, 4 Minn. 109.

6 *Scott v. Billgerry*, 40 Miss. 119.

7 *Parsons v. Bedford*, 3 Peters, 433; *Ins. Co. v. Comstock*, 16 Wall. 258; *U. S. v. La Vengeance*, 3 Dall. 297; *Webster v. Reld*, 11 How. 437; *Bains v. The James & Catherine*, Bald. 554.

8 *Kleinschmidt v. Dunphy*, 1 Mont. 118.

9 *Whallon v. Bancroft*, 4 Minn. 109.

10 *Bank v. Okely*, 4 Wheat. 235; *Parsons v. Armor*, 3 Peters, 415; *U. S. v. Rathbone*, 2 Paine, 578.

11 *Waring v. Clarke*, 5 How. 441; *The Huntress*, 2 Ware, (Dav.) 89; *U. S. v. Bright*, Bright, 19; *Bains v. The James & Catherine*, Bald. 544.

12 *U. S. v. La Vengeance*, 3 Dall. 297; *The Margaret*, 9 Wheat. 421; *The Betsey*, 4 Cranch, 443; *Whelan v. U. S.* 7 Cranch, 112; *U. S. v. The Queen*, 4 Ben. 237; *Clark v. U. S.* 2 Wash. C. C. 519; *U. S. v. Irma*, 12 Int. Rev. Rec. 42.

13 *Shields v. Thomas*, 18 How. 353; *Woodworth v. Rogers*, 3 Wood. & M. 135; *Ely v. M. & B. Manuf. Co.* 4 Fish. 64; *Scott v. Billgerry*, 40 Miss. 119; *Motts v. Bennett*, 2 Fish. 642.

14 *Ableman v. Booth*, 21 How. 506; 3 Wis. 157; *Miller v. McQuerry*, 5 McLean, 469; *Ex parte Martin*, 2 Paine, 348.

15 *Miller v. McQuerry*, 5 McLean, 469; *Ex parte Martin*, 2 Paine, 348.

16 *Bonaparte v. Camden &c. R. R. Co.* Bald. 205.

**Right, when not to attach.**—This section does not apply to a motion for summary relief,<sup>1</sup> as that judgment may be entered against the surety on an appeal bond,<sup>2</sup> or a judgment by default for failure to produce books and papers,<sup>3</sup> or for judgment on a forfeited recognizance;<sup>4</sup> nor does it apply to preliminary inquiries which do not involve a trial of the merits,<sup>5</sup> nor to cases where the facts are conceded,<sup>6</sup> nor to a proceeding to annul the license of a pilot,<sup>7</sup> nor to the imposition of a fine for failure to comply with the inspection laws,<sup>8</sup> nor where there is default in proceedings under confiscation laws, in a seizure on land;<sup>9</sup> but in an information *in rem*, the claimant is entitled to a trial by jury.<sup>10</sup> A trial by

referees without the consent of the parties is not sanctioned;<sup>11</sup> so, a nonsuit cannot be ordered in any case without the consent of the plaintiff.<sup>12</sup> A statute appointing commissioners to determine titles, and making their award final, does not take away the right of trial by jury;<sup>13</sup> but the State legislature cannot direct the Federal courts, in a trial at common law, to appoint commissioners on questions which should be submitted to a jury.<sup>14</sup>

1 *Banning v. Taylor*, 12.

2 *Hirlart v. Ballou*, 9 Peters, 156.

3 *U. S. v. Distillery*, 8 Ch. L. N. 57.

4 *People v. Quigg*, 59 N. Y. 83.

5 *Ex parte Martin*, 2 Paine, 348.

6 *U. S. v. Anthony*, 11 Blatchf. 210.

7 *Low v. Commissioners*, R. M. Charl. 302.

8 *Green v. Savannah*, R. M. Charl. 368.

9 *Miller v. U. S.* 11 Wall. 268.

10 *U. S. v. Barrels*, 1 Bond. 587; *U. S. v. Distillery*, 8 Ch. L. N. 57; *U. S. v. Packages*, Gilp. 235.

11 *U. S. v. Rathbone*, 2 Paine, 578.

12 *Elmore v. Grymes*, 1 Peters, 469; *D'Wolf v. Rabaud*, 1 Peters, 476.

13 *Barker v. Jackson*, 1 Paine, 559.

14 *Green v. Biddle*, 8 Wheat. 1; *Bank of Hamilton v. Dudley*, 2 Peters, 492.

**Re-examination of causes.**—The second clause of this article is substantial and independent, and applies to cases coming into Federal courts from State courts, and protects the verdicts rendered therein.<sup>1</sup> The only mode of review is on motion for a new trial.<sup>2</sup> Since this amendment, Congress cannot confer authority to grant a new trial by a re-examination of the facts tried by a jury, except to redress errors of law.<sup>3</sup> An act of Congress, so far as it authorizes the removal of causes after verdict, and trial and determination of the facts and law, is in violation of this amendment;<sup>4</sup> but an act requiring the appellant to advance the jury fee is valid.<sup>5</sup>

1 *Justices v. Murray*, 9 Wall. 274.

2 *Parsons v. Bedford*, 3 Peters, 433; *U. S. v. Wonson*, 1 Gall. 20; *Patrie v. Murray*, 43 Barb. 323; 29 How. Pr. 312; *Wetherbee v. Johnson*, 14 Mass. 412.

3 *Parsons v. Bedford*, 3 Peters, 433; *Bank of Hamilton v. Dudley*, 2 Peters, 492.

4 *Benjamin v. Murray*, 28 How. Pr. 193; *Patrie v. Murray*, 43 Barb. 323; 14 Mass. 412. And see *Spencer v. Lapsley*, 20 How. 264; *People v. Murray*, 5 Park. C. C. 577.

5 *Venine v. Archibald*, 3 Colo. 163.



## ARTICLE VIII.

## BAIL—FINES—PUNISHMENTS.

## SECTION 1.

*Not to be excessive.*

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

This provision applies to National and not to State legislation.<sup>1</sup> The Supreme Court cannot on *habeas corpus* revise the sentence of an inferior court on the ground that the fine was excessive.<sup>2</sup> The constitutional right to bail is not operative after trial and conviction.<sup>3</sup>

1 *Barron v. Baltimore*, 7 Peters, 243; *Pervear v. Commonwealth*, 5 Wall. 480; *James v. Commonwealth*, 12 Serg. & R. 220; *Barker v. People*, 3 Cowen, 686.

2 *Ex parte Watkins*, 7 Peters, 568.

3 *Ex parte Schwartz*, 2 Tex. Ct. App. 74.  
See Supplement, *post*, 825.

## ARTICLE IX.

## CERTAIN RIGHTS NOT DENIED TO THE PEOPLE.

## SECTION 1.

*Rights of people not disparaged by Constitution.*

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*

This provision applies to National and not to State legislation.

*Livingston v. Moore*, 7 Peters, 551.

## ARTICLE X.

## STATE RIGHTS.

## SECTION 1.

*Powers reserved to the States or to the people.*

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

**State rights.**—The powers proceed not from the people of America but from the people of the several States, and remain what they were before the adoption of the Constitution, except so far as they may be abridged by that instrument.<sup>1</sup> The powers not delegated to the United States, nor prohibited to the State, are reserved to the States respectively, or to the people.<sup>2</sup> “Delegated” is not qualified by “expressly,” such qualification was moved and rejected.<sup>3</sup> The United States and the States exercise jurisdiction within the same territorial limits, and are separate and independent sovereignties, acting separately and independently within their respective spheres, “as if a line of division was traced by landmarks and monuments visible to the eye.”<sup>4</sup> The General Government can claim no powers except such as are expressly granted, or are given by necessary implication.<sup>5</sup> Its powers are limited in number, but not in their nature.<sup>6</sup> So, it has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it.<sup>7</sup> Prohibitions on the States are not to be enlarged by construction.<sup>8</sup> That which is forbidden to the States is not necessarily in the Federal Government, but if that which is essential to government is prohibited to one, it is equivalent to a grant on the other.<sup>9</sup> See Supplement, *post*, 325.

1 *Sturges v. Crowninshield*, 4 Wheat. 122.

2 *Houston v. Moore*, 5 Wheat. 74; *McCulloch v. Md.* 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 483; *Osborn v. Bank of United States*, 9 Wheat. 738; *Brown v. Md.* 12 Wheat. 419; *Weston v. Charleston*, 2 Peters, 449; *Dobbins v. Commissioners*, 16 Peters, 435; *Collector v. Day*, 11 Wall. 113; *National Bank v. Commonwealth*, 9 Wall. 353; *Sweatt v. Boston &c. R. R. Co.* 5 Bank. Reg. 248; *U. S. v. Cruikshank*, 92 U. S. 550; *U. S. v. New Bedford Bridge*, 1 Wood. & M. 426; *Luman S. S. Co. v. Tinker*, 94 U. S. 238.

3 *McCulloch v. Md.* 4 Wheat. 316; *Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; *Anderson v. Dunn*, 6 Wheat. 226; *U. S. v. Bailey*, 1 McLean, 234.

4 *McCulloch v. Md.* 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 1; 17 Johns. 498; *Osborn v. Bank of United States*, 9 Wheat. 738; *Brown v. Md.* 12 Wheat. 419; *Weston v. Charleston*, 2 Peters, 449; *Dobbins v. Commissioners*, 16 Peters, 435; *Collector v. Day*, 11 Wall. 113; *National Bank v. Comm.* 9 Wall. 353; *Sweatt v. Boston &c. R. R. Co.* 5 Bank. Reg. 248; *Fraser v. State*, 3 Tex. Ct. App. 273; *Ableman v. Booth*, 21 How. 506; *Fifield v. Close*, 15 Mich. 505; *State v. Garton*, 32 Ind. 1; *State v. Gibson*, 36 Ind. 383; *People v. Brady*, 40 Cal. 198; *Lane Co. v. Oregon*, 7 Wall. 76; *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308; *Bradwell v. State*, 16 Wall. 130.

5 *Martin v. Hunter*, 1 Wheat. 304; 4 Munf. 1; *Thrasher v. State*, 3 Tex. Ct. App. 273.

6 *Kneedler v. Lane*, 45 Pa. St. 238; 3 Grant, 465.

7 *Commonwealth v. Dennison*, 24 How. 66.

8 *Anderson v. Baker*, 23 Md. 531.

9 *Van Huse v. Kanouse*, 13 Mich. 303.

**No right of secession.**—The right of secession is not reserved, and any statute or ordinance to that effect is a nullity,<sup>1</sup> and a State continues a member of the Union, notwithstanding the Ordinance of Secession.<sup>2</sup> A State can have no political existence outside and independent of the Constitution of the United States,<sup>3</sup> and the attempt to separate from the Union does not destroy its identity nor free it from the binding force of that Constitution,<sup>4</sup> nor release citizens from their obligation of loyalty to the Government.<sup>5</sup> The so-called Confederate Government and the rebel government of a State were not *de facto* governments during the Rebellion.<sup>6</sup> The confederation of the Southern States was in direct violation of the Constitution.<sup>7</sup>

See *Ante*, pp. 116, 193.

1 *Keith v. Clark*, 97 U. S. 461; *U. S. v. Morrison*, Chase, 521; *Texas v. White*, 7 Wall. 726; *White v. Cannon*, 6 Wall. 443; *Hall v. Hall*, 43 Ala. 438. And see *White v. Hart*, 13 Wall. 643; *Sequestration Cases*, 80 Tex. 688; *Chancely v. Bailey*, 37 Ga. 532; *Cent. R. R. Co. v. Ward*, 37 Ga. 515; *Hood v. Maxwell*, 1 W. Va. 219; *Pennywit v. Foote*, 27 Ohio St. 600; *U. S. v. Cathcart*, 1 Bond, 556.

2 *Texas v. White*, 7 Wall. 700.

3 *Penn v. Tollison*, 26 Ark. 545.

4 *Keith v. Clark*, 97 U. S. 451.

5 *U. S. v. Cathcart*, 1 Bond, 556.

6 *Chisholm v. Coleman*, 43 Ala. 204; *Powell v. Boon*, 43 Ala. 459. *Contra*, *Watson v. Stone*, 40 Ala. 451; *Michael v. State*, *Ibid.* 361; *Schelbel v. Bachs*, 41 Ala. 423. And see *Shepherd v. Reese*, 42 Ala. 329.

7 *Florida v. Georgia*, 17 How. 478.

**Reserved powers of State.**—The several States, for all purposes, except those of a national character, are foreign to and independent of each other.<sup>1</sup> The State legislature retains all the powers of legislation delegated to it by the State constitution, which are not expressly taken away by the Constitution of the United States;<sup>2</sup> so, every State has the right to determine the *status* or domestic and social condition of the persons domiciled within its territory.<sup>3</sup> The protection of citizens in their religious liberty is left to the State constitution and laws.<sup>4</sup> So, the power to regulate suffrage belongs exclusively to the State, with which Congress cannot interfere.<sup>5</sup> The power to direct and regulate the mode of selling goods by citizens is in the State government.<sup>6</sup> A State may bind itself by contract.<sup>7</sup> There is nothing in the Constitution which forbids the legislature of a State to exercise judicial functions.<sup>8</sup> The establishment of courts of justice, appointment of judges, and the regulation of the administration of justice within each State, are within the peculiar and exclusive province of State legislatures.<sup>9</sup> States have the power to regulate the tenure of real property within their limits, the mode of acquisition, rule of descent, and extent of testamentary disposition.<sup>10</sup> Measures calculated to produce public benefits through the medium of corporations are within the reserved powers of the States.<sup>11</sup> The Constitution does not furnish the corrective for the abuse of power by State governments. This is left to the interest, wisdom, and justice of the representative body, and its relations with its constituents.<sup>12</sup>

1 *Buckner v. Finley*, 2 Peters, 586; *Bank of U. S. v. Daniel*, 12 Peters, 33; *Bank of Augusta v. Earle*, 13 Peters, 520; *Dodge v. Woolsey*, 18 How. 350.

2 *Calder v. Bull*, 3 Dall. 386; 2 Root, 350; *Commonwealth v. Kimball*, 41 Mass. 359; *People v. Naglee*, 1 Cal. 231.

3 *Strader v. Graham*, 10 How. 82.

4 *Permell v. First Municipality*, 3 How. 587.

5 *Huber v. Reilly*, 53 Pa. St. 112.

6 *Commonwealth v. Kimball*, 41 Mass. 359.

7 *Piqua Bank v. Knoop*, 16 How. 369; *Ohio T. Co. v. Debolt*, 16 How. 416; 1 Ohio St. 563; *Boston &c. R. R. Co. v. Salem &c. R. R. Co.* 68 Mass. 1.

8 *Satterlee v. Mathewson*, 2 Peters, 380.

9 *Calder v. Bull*, 3 Dall. 386; 2 Root, 350; *Lapsley v. Brashears*, 4 Litt. 47.

10 *U. S. v. Fox*, 94 U. S. 315; *Commonwealth v. Kimball*, 41 Mass. 359; *Fraser v. State*, 3 Tex. Ct. App. 273.

11 *Willson v. Blackbird C. M. Co.* 2 Peters, 245; *S. & V. R. R. Co. v. Stockton*, 41 Cal. 189.

12 *Providence Bank v. Billings*, 4 Peters. 514.

## ARTICLE XI.

## JUDICIAL POWERS.

## SECTION 1.

*Limitation on.*

*The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.*

*Amendment, proposed 5th March, 1794; ratified 8th January, 1798.*

**Extent of restriction.**—This provision was held to extend to all pending suits, as well as to future cases,<sup>1</sup> but applies only to original suits, and not to appeals or writs of error;<sup>2</sup> nor does it extend to suits of admiralty or maritime jurisdiction.<sup>3</sup> The amendment is of necessity limited to those suits in which a State is a party to the record,<sup>4</sup> or where the chief magistrate is sued in a claim upon him in his official character.<sup>5</sup> The amendment provides that no suit shall be commenced or prosecuted against a State,<sup>6</sup> and for those cases only.<sup>7</sup> If the State be not necessarily a defendant, although its interest may be affected, this amendment does not apply.<sup>8</sup> A State by becoming interested in a corporation lays down its sovereignty so far as respects the transactions of the corporation.<sup>9</sup> So, a suit may be maintained against a corporation, although a State be a member thereof,<sup>10</sup> or even the sole corporator.<sup>11</sup> A mere suggestion of title in the State to property in the possession of an individual will not prevent a Federal court from looking into the validity of the title; and if the court decides that the State has no title, the State cannot resist legal process in the case.<sup>12</sup> Although an independent sovereign cannot be sued,<sup>13</sup> yet there is nothing in the Constitution to deprive a State court of jurisdiction over suits which it possessed before the Constitution was adopted.<sup>14</sup> See Supplement, *post*, 325.

1 *Hollingsworth v. Virginia*, 3 Dall. 373; *Cohens v. Virginia*, 6 Wheat. 234; *Georgia v. Brailsford*, 2 Dall. 402; 3 Dall. 1.

2 *Cohens v. Virginia*, 6 Wheat. 264.

3 *Olmstead's Case*, Bright. 9; *Ex parte Madrazo*, 7 Peters, 627.

4 *Osborn v. Bank of United States*, 9 Wheat. 733; *Chisholm v. Georgia*, 2 Dall. 419; *Cherokee Nation v. Georgia*, 5 Peters. 1; *U. S. v. Peters*, 5 Cranch. 115; *Davis v. Gray*, 16 Wall. 203; *Olmstead's Case*, Bright. 9; *U. S. v. Bright*, Bright. 19; *Swasey v. N. C. R. R. Co.* 1 Hughes, 1; 71 N. C. 571.

5 *Governor of Ga. v. Madrazo*, 1 Peters, 123.

6 U. S. v. Peters, 5 Cranch, 139; Osborn v. Bank of United States, 9 Wheat. 738.

7 Cohens v. Virginia, 6 Wheat. 264.

8 Fowler v. Lindsay, 3 Dall. 411; New York v. Connecticut, 4 Dall. 1; U. S. v. Peters, 5 Cranch, 139; Osborn v. Bank of United States, 9 Wheat. 738; Louisville &c. R. R Co. v. Letson, 2 How. 550.

9 Briscoe v. Bank of Kentucky, 11 Peters, 324; Dayton v. Bank of Alabama, 13 How. 12; Curran v. Arkansas, 15 How. 309.

10 Bank of United States v. Planters' Bank, 9 Wheat. 904; Louisville &c. R. R. Co. v. Letson, 2 How. 497.

11 Bank of Kentucky v. Wlster, 2 Peters, 318; 3 Ibid. 431.

12 U. S. v. Peters, 5 Cranch, 115; Osborn v. Bank of United States, 9 Wheat. 738.

13 Osborn v. Bank of United States, 9 Wheat. 738.

14 Garr v. Bright, 1 Barb. Ch. 157.

## ARTICLE XII.

### ELECTION OF PRESIDENT AND VICE-PRESIDENT.

#### SECTION 1.

##### *Manner of election, etc.*

*The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the*

*States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.*

*The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.*

*But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.*

*Amendment, ratified September 25th, 1804.*

## ARTICLE XIII.

### SLAVERY.

#### SECTION 1.

##### *Slavery prohibited.*

**Sec. 1.** *Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

**This section** was not intended to afford relief to parties unlawfully deprived of their liberty, its purpose is satisfied when such restraint is rendered illegal.<sup>1</sup> The object of this provision was to deprive both Congress and the respective States of the power to reduce any persons to the condition of slavery or involuntary servitude, except as a punishment for crime.<sup>2</sup> Servitude has a larger meaning than slavery.<sup>3</sup> The utmost effect of this clause is to declare the colored as free as the white race—it gives the colored race nothing more than freedom.<sup>4</sup> It is a positive declaration that slavery shall not exist.<sup>5</sup> That personal servitude was meant is shown by the word “involuntary.”<sup>6</sup> Indenture of apprenticeship in violation of State laws is an involuntary servitude within this provision.<sup>7</sup> Contracts relating to slaves, if valid when made, are not

impaired by this amendment.<sup>8</sup> Emancipation made slaves citizens of the United States.<sup>9</sup> So, emancipation under a State constitution makes them citizens.<sup>10</sup> See *post*, 326.

- 1 *People v. Brady*, 40 Cal. 198.
- 2 *People v. Washington*, 28 Cal. 658.
- 3 *Slaughter-House Cases*, 16 Wall. 69; *Matter of Turner*, 1 Abb. U. S. 84.
- 4 *Bowlin v. Commonwealth*, 2 Bush, 5.
- 5 *U. S. v. Cruikshank*, 92 U. S. 543; 1 Woods, 308.
- 6 *Slaughter-House Cases*, 16 Wall. 74; *Matter of Turner*, 1 Abb. U. S. 84.
- 7 *Matter of Turner*, 1 Abb. U. S. 84.
- 8 *Osborn v. Nicholson*, 13 Wall. 654; 1 Dill. 219; *White v. Hart*, 13 Wall. 646; 30 Ga. 303; *Boyce v. Tabb*, 18 Wall. 540; *McElvain v. Mudd*, 44 Ala. 43; *Roundtree v. Baker*, 52 Ill. 241; *Calhoun v. Calhoun*, 2 Rich. N. S. 233; *Hall v. Keese*, 31 Tex. 504. But see *Gautden v. Stoddard*, 41 Ga. 329; *Cherry v. Jones*, 41 Ga. 579; *Wainwright v. Bridges*, 19 La. An. 234; *Austin v. Sandel*, *Ibid.* 309; *Halley v. Hoeffner*, *Ibid.* 518; *Lytle v. Whicher*, 21 La. An. 182; *Rodrigues v. Bienvenu*, 22 La. An. 300; *Succession of Woodward*, *Ibid.* 305.
- 9 *U. S. v. Rhodes*, 1 Abb. U. S. 28.
- 10 *Matt. of Turner*, 1 Abb. U. S. 84.

## SECTION 2.

**Sec. 2.** *Congress shall have power to enforce this article by appropriate legislation.*

*Amendment, proposed 1st Feb., 1865; declared ratified, 18th Dec., 1865.*

This clause authorizes Congress to pass such laws as are appropriate, but not to annul State laws, or control their operation.<sup>1</sup> Legislation which practically tends to securing the full enjoyment of personal freedom is appropriate.<sup>2</sup> A law which only permits the same class of persons to testify against a black man as are allowed to testify against a white man, in a matter where personal liberty is concerned, tends to enforce this amendment.<sup>3</sup> Power to enforce this article by appropriate legislation imports nothing more than to uphold the emancipating section, and prevent a violation of the contemplated liberty of the enfranchised race.<sup>4</sup> This clause does not authorize Congress to pass laws for the punishment of ordinary crimes and offenses against persons of the colored race—that belongs to the State government.<sup>5</sup> See *post*, 326.

- 1 *People v. Brady*, 40 Cal. 198.
- 2 *People v. Washington*, 28 Cal. 658.
- 3 *U. S. v. Rhodes*, 1 Abb. U. S. 34; *People v. Washington*, 28 Cal. 658. But see *Bowlin v. Commonwealth*, 2 Bush, 5.
- 4 *Bowlin v. Commonwealth*, 2 Bush, 5.
- 5 *U. S. v. Cruikshank*, 92 U. S. 543; 1 Woods, 308.



## ARTICLE XIV.

## CITIZENSHIP, REPRESENTATION, AND PUBLIC DEBT.

## SECTION 1.

*Who are citizens—rights of.*

**Sec. 1.** *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

**Citizens.**—"Citizen" and "person" are synonymous terms, and this section refers to natural persons.<sup>1</sup> An incorporated company is not a citizen of the United States, nor a person within the meaning of this section.<sup>2</sup> "Citizen" is entirely analogous to "subject" at common law.<sup>3</sup> A person may be a citizen of the United States without being a citizen of any State.<sup>4</sup> Women may be citizens.<sup>5</sup> This section does not confer citizenship upon persons of foreign birth.<sup>6</sup> The words "subject to the jurisdiction thereof" exclude the children of foreigners transiently within the United States, as ministers, consuls, or subjects of a foreign nation.<sup>7</sup> This amendment does not include Indians or others not born in and subject to the jurisdiction of the United States;<sup>8</sup> but an Indian, if taxed, after tribal relations have been abandoned, is a citizen.<sup>9</sup> Colored persons equally with whites are citizens,<sup>10</sup> but an escaped slave, resident of Canada, or his children, are not citizens.<sup>11</sup> This section recognizes the difference between citizens of the United States and citizens of the State.<sup>12</sup> The main purpose of this amendment was to establish the citizenship of the negro.<sup>13</sup> This clause applies only to citizens removing from one State to another.<sup>14</sup> See *post*, 326.

1 *People v. C. & A. R. R. Co.* 6 Chlc. L. N. 280.

2 *Insurance Co. v. New Orleans*, 1 Woods, 85.

3 *U. S. v. Rhodes*, 1 Abb. U. S. 39; *North Carolina v. Manuel*, 4 Dev. & B. 20; *McKay v. Campbell*, 2 Sawy. 129.

4 *Slaughter-House Cases*, 16 Wall. 74; *U. S. v. Cruikshank*, 92 U. S. 643; 1 Woods, 308; *Cully v. Baltimore &c. R. R. Co.* 1 Hughes, 536.

5 *Miner v. Happersett*, 21 Wall. 162.

6 *Van Valkenburg v. Brown*, 43 Cal. 43.

7 *Slaughter-House Cases*, 1 Abb. N. C. 73.

8 *McKay v. Campbell*, 2 Sawy. 129.

9 *U. S. v. Elm*, 23 Int. Rev. Rec. 419.

10 *In re Turner*, 1 Abb. U. S. 88.

11 *Hedgman v. Board*, 26 Mich. 51.

12 *Frasher v. State*, 3 Tex. Ct. App. 267.

13 *Slaughter-House Cases*, 16 Wall. 36; *Frasher v. State*, 3 Tex. Ct. App. 267.

14 *Ex parte Hobbs*, 1 Woods, 542; *Live Stock &c. Asso. v. Crescent City*, 1 Abb. U. S. 397.

**Civil rights.**—The purpose of this amendment was to secure to the colored race in the South the benefit of the freedom previously accorded to them.<sup>1</sup> Privileges and immunities of citizens include such as are derived from or recognized by the Constitution,<sup>2</sup> and are not identical with those referred to in section two of article four.<sup>3</sup> This amendment adds nothing to the rights of one citizen as against another,<sup>4</sup> nor does it add to the privileges and immunities existing at the time of its adoption;<sup>5</sup> it is merely a guaranty that they shall not be impaired by the States or by the United States.<sup>6</sup> It not merely requires equality of privileges and immunities, but demands that they shall be absolutely unabridged and unimpaired.<sup>7</sup> States may pass laws to regulate the privileges and immunities of its own citizens, provided they do not abridge the privileges and immunities of citizens of the United States;<sup>8</sup> so, a State may pass laws for the protection of the lives, health, and property of its citizens.<sup>9</sup> Congress cannot protect a citizen in the right to the use of a public conveyance for local travel.<sup>10</sup> The right of intermarriage between the races is not a privilege or immunity protected by this amendment, the marriage laws being under control of the State;<sup>11</sup> so, States may provide against miscegenation, and make it a felony.<sup>12</sup> Nor is the right of trial by jury,<sup>13</sup> nor the right to practice law<sup>14</sup> or medicine,<sup>15</sup> nor the right to sell intoxicating liquors,<sup>16</sup> nor the right of fishery.<sup>17</sup> The possession of all political rights is not essential to citizenship.<sup>18</sup> So, a State may regulate the conditions for the tenure of office,<sup>19</sup> or determine the class of inhabitants who may vote.<sup>20</sup> The elective franchise is not a natural right, nor an immunity.<sup>21</sup> By this amendment all persons born in the United States are citizens thereof and capable of becoming voters, but the provision is not self-executing.<sup>22</sup> But it abrogates the provision in a statute discriminating in votes for corporation commissioners on account of race or color.<sup>23</sup> By this amendment Congress had the right to pass the Civil Rights Bill,<sup>24</sup> which is constitutional.<sup>25</sup> Congress can only

legislate in protection of the rights of citizens of the United States, as such.<sup>26</sup> This amendment authorizes an act providing for the equal enjoyment of accommodations, advantages, facilities, and privileges of inns, conveyances, theaters, etc.<sup>27</sup> It was not intended to transfer the protection of all civil rights to the Federal Government, nor to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the several States.<sup>28</sup> See Supplement, *post*, 327.

1 Slaughter-House Cases, 16 Wall. 71.

2 State *v.* McCann, 21 Ohio St. 198.

3 Slaughter-House Cases, 16 Wall. 71. The meaning of "privileges" in Art. IV, Sec. 2, (1) is such as each State gave to its own citizens, while its meaning in this section embraces much more, and applies to all citizens of the United States. Live Stock &c. Asso. *v.* Crescent City, 1 Abb. U. S. 398; U. S. *v.* Anthony, 11 Blatchf. 204. The meaning to be determined by the court in each particular case. *Ex parte Hobbs*, 1 Woods, 542; Live Stock &c. Asso. *v.* Crescent City, 1 Abb. U. S. 397. See *ante*, Art. IV, Sec. 2.

4 U. S. *v.* Cruikshank, 92 U. S. 543; 1 Woods, 308; Ward *v.* Flood, 48 Cal. 36.

5 Miner *v.* Happersett, 21 Wall. 162; Ward *v.* Flood, 48 Cal. 36; Frasher *v.* State, 3 Tex. Ct. App. 267.

6 U. S. *v.* Cruikshank, 92 U. S. 543; 1 Woods, 308; Van Valkenburg *v.* Brown, 43 Cal. 43. But see U. S. *v.* Hall, 13 Int. Rev. Rec. 181; 3 Ch. L. N. 260.

7 Live Stock &c. Association *v.* Crescent City, 1 Abb. U. S. 398.

8 Slaughter-House Cases, 16 Wall. 36.

9 Slaughter-House Cases, 16 Wall. 36; Thorpe *v.* Rutland &c. R. R. Co. 27 Vt. 149; New York *v.* Miln, 11 Peters, 102; Prigg *v.* Comm. 16 Peters. 539; Comm. *v.* Kimball, 24 Pick. 350; Frasher *v.* State, 3 Tex. Ct. App. 273. This amendment was not intended to interfere with State laws for the regulation of pursuits, professions, or the use of property. Munn *v.* People, 69 Ill. 80.

10 Cully *v.* Balt. & O. R. R. 1 Hughes, 536.

11 *Ex parte Hobbs*, 1 Woods, 537; Lonas *v.* State, 3 Helsk. 287; State *v.* Gibson, 36 Ind. 389; Commr. *v.* Elliott, 18 How. 501; Frasher *v.* State, 3 Tex. Ct. App. 263. But see Burns *v.* State, 43 Ala. 195.

12 Frasher *v.* State, 3 Tex. Ct. App. 262; State *v.* Gibson, 36 Ind. 389.

13 Walker *v.* Sauvinet, 92 U. S. 90.

14 Bradwell *v.* State, 16 Wall. 130; U. S. *v.* Anthony, 11 Blatchf. 204.

15 *Ex parte Spinney*, 10 Nev. 323.

16 Bartemeyer *v.* Iowa, 18 Wall. 129.

17 McCready *v.* Virginia, 94 U. S. 391.

18 People *v.* De La Guerra, 40 Cal. 311.

19 Kennard *v.* Louisiana, 92 U. S. 480; Spencer *v.* Board, 1 McArth. 169.

20 Van Valkenburg *v.* Brown, 43 Cal. 43; U. S. *v.* Anthony, 11 Blatchf. 200; U. S. *v.* Crosby, 1 Hughes, 443; Minor *v.* Happersett, 21 Wall. 162; U. S. *v.* Cruikshank, 92 U. S. 543. But see Dillard *v.* Webb, 55 Ala. 468.

21 *Minor v. Happersett*, 21 Wall. 162; *U. S. v. Cruikshank*, 92 U. S. 542; 1 Woods, 308; *U. S. v. Anthony*, 11 Blatchf. 200; *Spencer v. Board*, 1 McArth. 169; *Van Valkenburg v. Brown*, 43 Cal. 43.

22 *Spencer v. Board*, 1 McArth. 169.

23 *Dillard v. Webb*, 55 Ala. 468.

24 *Smith v. Moody*, 26 Ind. 307.

25 *In re Turner*, 1 Abb. U. S. 88; *Chase*, 157.

26 *Cully v. Balt. &c. R. R. Co.* 1 Hughes, 536; *U. S. v. Cruikshank*, 92 U. S. 560; 1 Woods, 308.

27 *U. S. v. Newcomer*, 22 Int. Rev. Rec. 115; 2 Am. L. T. Rep. N. S. 198.

28 *Slaughter-House Cases*, 16 Cal. 33; *Fraser v. State*, 3 Tex. Ct. App. 267.

**Protection of citizens.**—The protection of life and personal liberty rests in the State alone.<sup>1</sup> The Federal Government cannot punish an individual for conspiring to deprive a person of life or liberty without due process of law.<sup>2</sup> An arrest made by an officer of the State militia, in pursuance of authority granted in time of insurrection, is not a deprivation of liberty without due process of law.<sup>3</sup> A law allowing overseers to commit a vagrant on an *ex parte* hearing deprives of liberty without due process of law.<sup>4</sup> A State law regulating a pursuit or profession, or regulating the use of property, does not abridge the liberty of the citizen.<sup>5</sup> A statute regulating the use and even the price of property does not, in all cases, deprive of property without due process of law;<sup>6</sup> nor does a law which prohibits common carriers from discriminating against passengers on account of race and color.<sup>7</sup> Private property devoted to public use ceases to be private property to the extent of that use.<sup>8</sup> Due process of law means such an exertion of the power of government as the settled maxims of law permit and sanction,<sup>9</sup> in the regular course of administration, according to prescribed forms,<sup>10</sup> according to the law of the land.<sup>11</sup> It means more than a special act authorizing the deprivation.<sup>12</sup> Where the statute makes ample provision for judicial inquiry, it is due process of law.<sup>13</sup> A party is not deprived of property without due process of law, although the case was tried without a jury.<sup>14</sup> The requirement is met if the trial is had according to the settled course of judicial proceedings.<sup>15</sup> So, the fact that the judgment of the commissioner is final does not deprive such person of due process of law;<sup>16</sup> and an entry of judgment on a forfeited recognizance does not take property without due process of law.<sup>17</sup> This amendment does not apply to revenue collection.<sup>18</sup> Assessment of taxes is necessarily summary, and need not be by judicial pro-

cedure;<sup>19</sup> so, a levy by a collector, in pursuance of a State law, is due process of law.<sup>20</sup> A statute regulating proceedings in contestations between claimants for a judicial office is not in violation of this section.<sup>21</sup> See *post*, 328.

- 1 U. S. v. Cruikshank, 92 U. S. 542; 1 Woods, 308.
- 2 U. S. v. Cruikshank, 92 U. S. 542; 1 Woods, 308.
- 3 In re Bergen, 2 Hughes, 512.
- 4 Portland v. Bangor, 65 Me. 120.
- 5 Munn v. Illinois, 94 U. S. 113; 69 Ill. 80; Ex parte Spinney, 10 Nev. 323; Railroad Co. v. Richmond, 96 U. S. 521.
- 6 Munn v. Illinois, 94 U. S. 113; 69 Ill. 80.
- 7 De Cuir v. Benson, 7 La. An. 1.
- 8 Munn v. Illinois, 94 U. S. 113; 69 Ill. 80.
- 9 Ex parte Ah Fook, 49 Cal. 402.
- 10 Rowan v. State, 30 Wis. 129.
- 11 Walker v. Sauvinet, 92 U. S. 93; Kennard v. Louisiana, 92 U. S. 493.
- 12 Clark v. Mitchell, 64 Mo. 564.
- 13 Pearson v. Yewdall, 95 U. S. 296.
- 14 Walker v. Sauvinet, 92 U. S. 90.
- 15 Murray v. Hoboken &c. Co. 18 How. 230; Walker v. Sauvinet, 92 U. S. 93.
- 16 Ex parte Ah Fook, 49 Cal. 402.
- 17 People v. Quigg, 59 N. Y. 83.
- 18 Davidson v. New Orleans, 6 Am. Law Reg. 1.
- 19 McMillan v. Anderson, 6 Am. L. J. 335.
- 20 McMillan v. Anderson, 6 Am. L. J. 335.
- 21 Kennard v. Louisiana, 92 U. S. 490.

**Equal protection of the laws.**—Equal protection implies not only equal accessibility to courts for the prevention or redress of wrongs, and the enforcement of rights, but equal exemption with others of the same class from all charges and burdens of every kind.<sup>1</sup> This amendment does not create any new rights, but operates on rights as it found them established.<sup>2</sup> It applies to all persons, whether native or foreigners, while within the jurisdiction of the United States,<sup>3</sup> including persons of color,<sup>4</sup> and operates as a guaranty.<sup>5</sup> It means that persons made citizens by this amendment should be protected by law in the same manner and to the same extent that white citizens are protected.<sup>6</sup> A statute excluding colored children from the benefits of the school system denies them the equal protection of the laws,<sup>7</sup> but a statute providing for the education of colored children in separate schools is valid.<sup>8</sup> A law imposing a tax on minors

which discriminates in its operation as to race, is in conflict.<sup>9</sup> A State may legislate as to the rules of evidence,<sup>10</sup> and may exclude Chinese from the right to testify where a white person is a party.<sup>11</sup> The Civil Rights Bill had the effect in California of excluding the testimony of Chinese for or against negroes equally with whites.<sup>12</sup> This clause does not prevent States from imposing a more severe punishment for adultery or fornication where the parties are of different races.<sup>13</sup> A statute authorizing the recovery of double the value of property destroyed by a railroad train does not deprive of the equal protection of the laws;<sup>14</sup> nor does a statute regulating slaughter-houses;<sup>15</sup> nor a statute regulating the charges for storage in warehouses.<sup>16</sup> A State may legislate to prevent lewd and debauched women from landing as passengers,<sup>17</sup> or to prohibit females from being in places where liquor is sold.<sup>18</sup> This provision simply prevents States from doing that which will deprive of property, not from regulating the use of property.<sup>19</sup> See Supplement, *post*, 329.

1 Ex parte Ah Fong, 3 Sawy. 144.

2 Ward v. Flood, 48 Cal. 36.

3 Ex parte Ah Fong, 3 Sawy. 144.

4 Slaughter-House Cases, 16 Wall. 36.

5 U. S. v. Cruikshank, 92 Wall. 543; 1 Woods, 308.

6 Slaughter-House Cases, 16 Wall. 36.

7 Ward v. Flood, 48 Cal. 36. But see Marshall v. Donovan, 10 Bush, 631.

8 Ward v. Flood, 48 Cal. 36; Cory v. Carter, 48 Ind. 327; State v. McCann, 21 Ohio St. 193.

9 U. S. v. Jackson, 3 Sawy. 61.

10 People v. Brady, 40 Cal. 198; Duffy v. Hobson, 40 Cal. 240.

11 People v. Brady, 40 Cal. 198, overruling People v. Washington, 33 Cal. 658.

12 People v. Washington, 36 Cal. 658.

13 Ford v. State, 53 Ala. 150; Ellis v. State, 42 Ala. 525.

14 Tredway v. S. C. & St. P. R. Co. 43 Iowa, 527.

15 Slaughter-House Cases, 16 Wall. 36.

16 Munn v. Illinois, 94 U. S. 113; 63 Ill. 80.

17 Ex parte Ah Fook, 49 Cal. 402.

18 Ex parte Nellie Smith, 38 Cal. 709.

19 Munn v. Illinois, 94 U. S. 134.

## SECTION 2.

*Apportionment of representation.*

**Sec. 2.** *Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States; Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.*

**Disability for office.**—The intent of this section was to create a disability to be made to operate by legislation of Congress.<sup>1</sup> The prohibition did not instantly on the day of its promulgation vacate all offices and make official acts since that day null and void.<sup>2</sup> A person who held office under the Confederate Government or aided in the Rebellion is disqualified. So, a sheriff who took an oath to support the Constitution is within this section.<sup>3</sup> So as to a county attorney.<sup>4</sup> As to the effect of this amendment as a bar to any other punishment, *quære?*<sup>5</sup>

1 Griffin's Case, Chase, 364; 25 Tex. Supp. 623; Powell v. Boon, 43 Ala. 469.

2 Griffin's Case, Chase, 364; 25 Tex. Supp. 623.

3 Worthy v. Barrett, 63 N. C. 199.

4 In re Tate, 63 N. C. 308.

5 Ex parte Jeff. Davis, Chase, 1.

## SECTION 3.

*Certain persons disqualified from holding office.*

**Sec. 3.** *No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United*

*States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.*

#### SECTION 4.

*Payment of public debt not to be questioned—Rebel debts not to be assumed.*

**Sec. 4.** *The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.*

**Confederate notes.**—No contract to pay in Confederate notes is valid, as it is a payment of debt incurred in aid of the Rebellion.

Smith v. Nelson, 34 Tex. 516.

See Supplement, *post*, 330.

#### SECTION 5.

*Enforcement of provisions.*

**Sec. 5.** *The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.*

*Amendment, proposed 16th June, 1866; declared ratified 28th July, 1868.*

**Enforcement.**—The war of race, in any form, even by private outrage or intimidation, is subject to the jurisdiction of the United States Government; and any atrocity may be punished by the laws and in the courts of the United States.<sup>1</sup> The Civil Rights Bill is constitutional,<sup>2</sup> but it does not prohibit the making of race and color a constituent of an offense if there be no discrimination in the punishment.<sup>3</sup> See Supplement, *post*, 330.

1 U. S. v. Cruikshank, 92 U. S. 542; 1 Woods, 308.

2 In re Turner, Chase, 157.

3 Ellis v. State, 42 Ala. 525.



## ARTICLE XV.

## ELECTIVE FRANCHISE.

## SECTION 1.

*Right of all citizens to vote.*

**Sec. 1.** *The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.*

**This amendment** invests the citizens of the United States with a new right within the protecting power of Congress.<sup>1</sup> It does not confer the right of suffrage on any one.<sup>2</sup> It takes away the authority of the State to discriminate against citizens of the United States on account of either race, color, or previous condition of servitude,<sup>3</sup> and colored persons equally with whites are citizens of the United States;<sup>4</sup> but the power of the States upon all other grounds, including that of sex, remains intact.<sup>5</sup> It does not include persons who have merely declared their intentions to become citizens.<sup>6</sup> See Supplement, *post*, 331.

1 U. S. v. Reese, 92 U. S. 218; U. S. v. Cruikshank, 92 U. S. 543; 92 U. S. 542; 1 Woods, 308.

2 Minor v. Happersett, 21 Wall. 178; U. S. v. Cruikshank, 92 U. S. 555; 1 Woods, 308; U. S. v. Reese, 92 U. S. 214; Anthony v. Haldeman, 7 Kan. 50; Hedgman v. State, 26 Mich. 51; U. S. v. Petersburg Judges, 14 Am. Law Reg. 105.

3 U. S. v. Reese, 92 U. S. 214; U. S. v. Cruikshank, 92 U. S. 543; 1 Woods, 308; U. S. v. Petersburg Judges, 14 Am. Law Reg. 105; Van Valkenburg v. Brown, 43 Cal. 43; Wood v. Fitzgerald, 3 Or. 568.

4 In re Turner, 1 Abb. U. S. 88.

5 Van Valkenburg v. Brown, 43 Cal. 43.

6 McKay v. Campbell, 2 Sawy. 129; Hedgman v. State, 26 Mich. 51.

## SECTION 2.

*Power to enforce provisions.*

**Sec. 2.** *The Congress shall have power to enforce this Article by appropriate legislation.*

*Amendment, proposed 27th February, 1869; declared ratified 30th March, 1870.*

**The rights of citizens** created by or dependent on the Constitution of the United States may be protected by Congress.<sup>1</sup> Congress may make the non-performance of duties of persons imposed by State laws, which affect the rights of persons, an offense against the United States, and may punish accordingly.<sup>2</sup>

<sup>1</sup> U. S. v. Reese, 92 U. S. 214.

<sup>2</sup> U. S. v. Gliven, 17 Int. Rev. Rec. 299.

See Supplement, *post*, 331.

## SUPPLEMENT.

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**Construction.** — The construction placed on the provisions of the Federal Constitution by the Supreme Court of the United States is binding on all the judicial tribunals in the United States.

*Vines v. State*, 67 Ala. 73.

**Preamble.** — The United States is a government of delegated powers, limited in number, but having absolute sovereignty, so far as those powers extend.

*Tennessee v. Davis*, 100 U. S. 257.

### ARTICLE I.

**Sec. 2, Sub. 1. Electors.** — This clause confers on all electors qualified by State laws the right to vote for members of Congress, and vests in Congress the power to protect them in that right.

*U. S. v. Goldman*, 3 Woods, 187.

**Sec. 3, Sub. 2.** — The object of this provision is to maintain a regular order of rotation which cannot be deranged by any action, executive or legislative. The election of a senator to fill a vacancy only entitles him to hold the office for the unexpired term.

*Simpson v. Willard*, 14 S. C. 199.

**Sec. 4, Sub. 1. Elections to Congress.** — The power vested in Congress to regulate elections for Senators and Representatives confers on it the power to protect electors in a free interchange of views, and a free choice and vote;<sup>1</sup> it may prohibit and follow with penal consequences any unauthorized acts on the part of election officers, with intent to affect such election or its results;<sup>2</sup> its powers extend to the registration of voters

at such elections, its authority being paramount to that of the State.<sup>3</sup> The failure of Congress to exercise its power does not impair the force of this grant, but it may be exercised, and new regulations made, or existing ones altered after State legislation on the subject.<sup>4</sup> This clause does not apply to State elections.<sup>5</sup>

1 U. S. v. Goldsmith, 3 Woods, 187.

2 U. S. v. Bader, 16 Fed. Rep. 116 ; U. S. v. Munford, 16 Fed. Rep. 223.

3 Ex parte Geissler, 9 Blss. 492.

4 Ex parte Siebold, 100 U. S. 371 ; Ex parte Clarke, 100 U. S. 399 ; U. S. v. Bader, 16 Fed. Rep. 116 ; U. S. v. Gale, 3 Sup. Ct. Rep. 1.

5 U. S. v. Munford, 16 Fed. Rep. 223.

**Sec. 5, Sub. 2. Contempts.**—While each House has the power to punish its own members, and even to punish witnesses, whose examination is necessary to the performance of its duties, there is no general power vested in either House to punish for contempt.

Kilbourn v. Thompson, 103 U. S. 168.

**Sec. 6, Sub. 1. Privileges of Senators and Representatives.**—This provision which exempts members from liability for any speech or debate also extends to exemption for any vote, report, or action, in their respective Houses, and this privilege is a good defense to an action.<sup>1</sup> This privilege does not extend to felonies, and an indictment for bribery is not arrested thereby ;<sup>2</sup> nor does it protect them from arrest for breach of the peace, or on probable cause that a breach of the peace is about to be committed.<sup>3</sup>

1 Kilbourn v. Thompson, 103 U. S. 168.

2 State v. Smalls, 11 S. C. 262.

3 U. S. v. Wise, 1 Dist. Columbia Rep. 82.

**Sec. 6, Sub. 2. Incompatible offices.**—A Representative or Senator elect does not become a member of the House, in the meaning of the above clause, until he is sworn as such, and until then may lawfully hold another office under the United States.

Anonymous, 14 Opin. Atty.-Gen. 133.

**Sec. 7, Sub. 2.** A bill signed by the President after Congress has adjourned is valid.

Hodge's Case, 18 Ct. of Cl. 700.

**Sec. 8, Sub. 1. Powers of taxation.**—Congress in the exercise of its powers to “levy and collect taxes, duties, and imposts” may raise money in any manner which is not repugnant to the Constitution.<sup>1</sup> Thus it may levy a tax on employments and occupations, as that of retail liquor dealer.<sup>2</sup> The means and instruments employed by the general government in the exercise of its functions are subjects properly within its powers of taxation,<sup>3</sup> and among these are included national banks;<sup>4</sup> and the use of State and corporation notes as a circulating medium.<sup>5</sup> In pursuance of such powers Congress may enforce payment of taxes by distraint and sale of property.<sup>6</sup> These powers vested in Congress may be exercised by the States under authority and subject to the restriction of the general government.<sup>7</sup> Uniformity of taxation is an equal sharing of the burdens thereof, and includes not only uniformity in the rate of percentage but also in the mode of assessment.<sup>8</sup> A license tax is uniform though it only affects one class of persons, if it affects all of that class equally.<sup>9</sup> A tax on a bank of all deposits except those under a certain sum is uniform, as a tax on the bank and not on the depositors.<sup>10</sup>

1 U. S. v. Angell, 11 Fed. Rep. 34.

2 U. S. v. Angell, 11 Fed. Rep. 34.

3 Pollard v. State, 65 Ala. 623.

4 Sumter Co. v. Gainesville Nat. Bank, 62 Ala. 464; Pollard v. State, 65 Ala. 628.

5 National Bank v. U. S. 101 U. S. 1.

6 Springer v. U. S. 102 U. S. 583.

7 Sumter Co. v. Gainesville Nat. Bank, 62 Ala. 464; Pollard v. State, 65 Ala. 628.

8 Railroad Tax Cases (Santa Clara Co. v. Southern Pacific R. R. Co.), 18 Fed. Rep. 385.

9 Head Money Cases (Edye v. Robertson), 18 Fed. Rep. 135.

10 German Sav. Bank v. Archbold, 15 Blatchf. 398.

**Sec. 8, Sub. 3. Commerce.**—Commerce refers to transportation and traffic, intercourse; and navigation.<sup>1</sup> Transportation

is an essential element of commerce,<sup>2</sup> including transportation of freight and passengers between the States,<sup>3</sup> or with foreign countries.<sup>4</sup> A corpse is not property and not a subject of commerce.<sup>5</sup> Navigation being included comprises the control of navigable waters,<sup>6</sup> accessible from a State other than that in which they lie,<sup>7</sup> and obstacles thereto.<sup>8</sup> It also includes navigation on the high seas by United States vessels.<sup>9</sup> Navigable waters are all such as will carry products and merchandise to and from the inhabitants of the banks thereof.<sup>10</sup> Commercial intercourse, as inter-state communication by telegraph, is a part of commerce.<sup>11</sup>

1 Lord v. Steamship Co. 102 U. S. 541.

2 Kaelser v. Illinois Cent. Ry. Co. 18 Fed. Rep. 151.

3 Indiana v. Pullman Palace Car Co. 11 Blss. 561.

4 Lord v. Steamship Co. 102 U. S. 541; People v. Campagne Generale, 107 U. S. 59; S. C. 20 Blatchf. 290; Head Money Cases, 18 Fed. Rep. 135; Pacific Coast S. S. Co. v. Railroad Commrs. 12 Pac. C. L. J. 63.

5 In re Wong Yung Quy, 6 Sawy. 442.

6 Bridge Co. v. U. S. 105 U. S. 470; Escanaba etc. Co. v. Chicago, 107 U. S. 678; Miller v. New York, 3 Sup. Ct. Rep. 228; Anonymous, 16 Opin. Atty.-Gen. 479; Anonymous, 16 Opin. Atty.-Gen. 534.

7 Hatch v. Willamette I. B. Co. 7 Sawy. 127.

8 Lord v. Steamship Co. 102 U. S. 541; Pacific Coast S. S. Co. v. Railroad Commrs. 12 Pac. C. L. J. 63.

9 Anonymous, 15 Opin. Atty.-Gen. 284.

10 Little Rock Co. v. Brooks, 30 Ark. 403.

11 Telegraph Co. v. Texas, 105 U. S. 466.

**Power of Congress to regulate.** — The power of Congress to regulate commerce is exclusive.<sup>1</sup> The fact that Congress has never regulated commerce does not give to the States the power to do so.<sup>2</sup> Commerce with foreign nations signifies such transactions as are at some stage of their progress as regards individual States, extra territorial.<sup>3</sup> In regulation thereof Congress may levy a duty on each alien passenger arriving from a foreign port.<sup>4</sup> Corporations engaged in foreign and inter-state commerce cannot be excluded by the States; such commerce is solely in the power of Congress.<sup>5</sup> The capital stock of a foreign corporation is not liable to taxation by the State.<sup>6</sup> Congress has the power to regulate commerce carried on between ports

in the same State, by vessels navigating the high seas between the ports,<sup>7</sup> where the vessels go beyond a marine league from the shore.<sup>8</sup> The power of Congress to regulate commerce includes control for the purposes of navigation, of all navigable waters in the United States, accessible from a State other than that in which they lie;<sup>9</sup> this includes the right to regulate, control, and divert the flow of water in the interests of navigation;<sup>10</sup> to construct and authorize construction of bridges over such waters,<sup>11</sup> even though it interfere with the navigation thereof;<sup>12</sup> but it cannot authorize a public nuisance, destroying the navigability of streams;<sup>13</sup> it may authorize the removal of obstructions to navigation.<sup>14</sup> Until these powers are exercised by Congress, the States may regulate navigable streams,<sup>15</sup> and authorize bridges<sup>16</sup> and wharves at will.<sup>17</sup> Transportation of freight and passengers between States is inter-state commerce, and within the regulating power of Congress;<sup>18</sup> and to fix rates for such transportation is a regulation of commerce, and not in the power of the States.<sup>19</sup> A tax on the receipts of a foreign sleeping car company is a regulation of commerce;<sup>20</sup> so also is an act regulating the carriage of live stock between States.<sup>21</sup> State statutes which discriminate in favor of goods made in the State and against those made out of it, are unconstitutional as regulations of commerce;<sup>22</sup> thus a statute levying a higher tax on imported wines than on the local production is unconstitutional;<sup>23</sup> so also is a statute levying a tax on peddlars and agents, and discriminating against those selling goods of other States;<sup>24</sup> so a State statute prescribing regulations for packing goods of other States is unconstitutional, being an attempt to regulate commerce.<sup>25</sup> Telegraph companies doing inter-state business are a subject for the regulating power of Congress, and no State can exclude them from doing business in its limits.<sup>26</sup> A State tax on telegraph companies for messages sent out of the State is invalid.<sup>27</sup> A corpse is not a person, nor property, and is therefore not a subject for regulation by Congress.<sup>28</sup> Congress has not power under this clause to regulate in regard to trade marks.<sup>29</sup> Congress, in its power to regulate commerce, does not acquire the right to regulate the internal commerce of the

States.<sup>30</sup> While States may exercise a reasonable police power, in so doing they cannot obstruct foreign or inter-state commerce.<sup>31</sup> A State statute prohibiting labor on Sundays so far as it affects inter-state commerce is invalid.<sup>32</sup> States cannot in exercise of this power exclude importation of all of a certain class of cattle, but can only quarantine the diseased cattle of that class.<sup>33</sup>

- 1 *Kaelser v. Illinois Cent. R. Co.* 18 Fed. Rep. 151.
- 2 *Commonwealth v. Philadelphia & R. Ry. Co.* 1 Pearson, 379.
- 3 *Lord v. Steamship Co.* 102 U. S. 541.
- 4 *People v. Campagnie Generale*, 107 U. S. 59 ; *S. C. 20 Blatchf.* 290 ; *Head Money Cases*, 18 Fed. Rep. 135.
- 5 *Indiana v. Pullman Palace Car Co.* 11 Biss. 561.
- 6 *Commonwealth v. Gloucester F. Ins. Co.* 98 Pa. 105 ; but see dissenting opinion, *Green*, J. 98 Pa. 117.
- 7 *Lord v. Steamship Co.* 102 U. S. 541 ; *The E. B. Ward*, 16 Fed. Rep. 255 ; *Webb v. Dunn*, 18 Fla. 721.
- 8 *Pacific Coast S. S. Co. v. Railroad Commrs.* 12 Pac. C. L. J. 63.
- 9 *Bridge Co. v. U. S.* 105 U. S. 470 ; *Miller v. New York*, 3 Sup. Ct. Rep. 228 ; *Hatch v. Willamette I. B. Co.* 7 Sawy. 127.
- 10 *Anonymous*, 16 Opin. Atty.-Gen. 479 ; *Anonymous*, 16 Opin. Atty.-Gen. 534.
- 11 *Bridge Co. v. U. S.* 105 U. S. 470 ; *Miller v. New York*, 3 Sup. Ct. Rep. 228 ; *S. C. 18 Blatchf.* 211 ; *People v. Kelly*, 76 N. Y. 475.
- 12 *People v. Kelly*, 76 N. Y. 475.
- 13 *Woodruff v. North Bloomfield G. M. Co.* 1 West Coast Rep. 183.
- 14 *Anonymous*, 15 Opin. Atty.-Gen. 284 ; *Anonymous*, 15 Opin. Atty.-Gen. 515.
- 15 *Escanaba Co. v. Chicago*, 107 U. S. 678 ; *Heerman v. Beef Slough Co.* 8 Biss. 334 ; *Miller v. New York*, 18 Blatchf. 211 ; *Huse v. Glover*, 15 Fed. Rep. 292 ; *People v. Kanakee R. I. Co.* 14 Chic. L. N. 341.
- 16 *Escanaba Co. v. Chicago*, 107 U. S. 678 ; *Transportation Co. v. Parkersburg*, 107 U. S. 691 ; *Hatch v. Willamette I. B. Co.* 7 Sawy. 127 ; *Talbot Co. v. Queen Anne Co.* 50 Md. 246.
- 17 *Transportation Co. v. Parkersburg*, 107 U. S. 691.
- 18 *Indiana v. Pullman Palace Car Co.* 11 Biss. 561 ; *Kaelser v. Illinois Cent. Ry. Co.* 18 Fed. Rep. 151 ; *State v. Philadelphia Co.* 4 Houst. 153.
- 19 *Kaelser v. Illinois Cent. Ry. Co.* 18 Fed. Rep. 151 ; *Carton v. Illinois Cent. Ry. Co.* 59 Iowa, 148 ; *Commonwealth v. Delaware L. etc. Ry. Co.* 1 Pearson, 356 ; *Commonwealth v. Pennsylvania etc. Ry. Co.* 1 Pearson, 379 ; *Commonwealth v. Erie Ry. Co.* 1 Pearson, 345.
- 20 *Indiana v. Pullman Palace Car Co.* 11 Biss. 561.
- 21 *U. S. v. Boston etc. Co.* 15 Fed. Rep. 209 ; *U. S. v. Fitchburg*, 15 Fed. Rep. 209.
- 22 *Albertson v. Wallace*, 81 N. C. 479.
- 23 *State v. Marsh*, 37 Ark. 356 ; *Tiernan v. Rinker*, 102 U. S. 123.



24 *In re Watson*, 15 Fed. Rep. 511; *Webber v. Virginia*, 103 U. S. 344; *Vines v. State*, 67 Ala. 73; *State v. Furbush*, 72 Me. 493.

25 *Higgins v. Lime*, 130 Mass. 1.

26 *American U. Tel. Co. v. Western U. Tel. Co.* 67 Ala. 36.

27 *Telegraph Co. v. Texas*, 105 U. S. 466.

28 *In re Wong Yung Quy*, 6 Sawy. 442.

29 *Trade Mark Cases*, 100 U. S. 82; *Lledesdorf v. Flint*, 8 Bliss. 327.

30 *Lord v. Steamship Co.* 102 U. S. 541.

31 *Salzenstein v. Mavis*, 91 Ill. 391; *Vines v. State*, 67 Ala. 73; *Powell v. State*, 69 Ala. 10.

32 *Dinsmore v. New York*, 12 Abb. N. C. 436.

33 *Salzenstein v. Mavis*, 91 Ill. 391; *Chicago etc. Ry. Co. v. Erickson*, 91 Ill. 613; *Jarvis v. Riggan*, 94 Ill. 174; *Gilmore v. Hannibal etc. Ry. Co.* 67 Mo. 323; *Urton v. Sherlock*, 75 Mo. 247.

**Powers of States.**—Congress, while it has power to regulate commerce among the several States, has no authority to control or interfere with the purely internal commerce of the States.<sup>1</sup> But the fact that Congress has never regulated subjects of commerce within its power does not give States the power to do so.<sup>2</sup> State legislation is not forbidden touching matters either local or as mere aids to commerce, as the improvement of harbors, the establishment of buoys and beacons,<sup>3</sup> provision for harbor pilotage,<sup>4</sup> and improvement of navigable rivers, and such matters not in conflict with the Constitution.<sup>5</sup> States in the absence of congressional legislation may regulate navigable waters as may seem best,<sup>6</sup> and in the exercise of that power may authorize the improvement thereof, and collection of tolls for use of such improvements,<sup>7</sup> but cannot vest such control in a corporation with power to charge tolls at discretion;<sup>8</sup> may prohibit floating of lumber unless bound in rafts.<sup>9</sup> The State has sole power to bridge internal navigable waters, subject to the power of Congress to prevent obstructions to navigation,<sup>10</sup> and may also in the absence of congressional legislation authorize bridges over public navigable streams,<sup>11</sup> and regulate draws therein.<sup>12</sup> Wharves, though related to commerce in the absence of congressional legislation, may properly be regulated by the States.<sup>13</sup> State statutes providing a lien on boats navigating interior waters are constitutional.<sup>14</sup> The States may regulate all matters within their jurisdiction, notwithstanding

they incidentally affect commerce; they may prevent unjust discrimination in railroad charges, though the railroad be an inter-state one;<sup>15</sup> may require stoppage of trains at way stations;<sup>16</sup> may regulate issuing of tickets to prevent ticket brokerage;<sup>17</sup> may in absence of congressional legislation authorize consolidation of railroads in the State with others out of it.<sup>18</sup> All subjects over which the sovereign power of the State extends are objects of taxation by it, and unless restrained by the Federal Constitution the power of the State as to such taxation is unlimited.<sup>19</sup> A State law imposing a business or license tax on foreign corporations is valid.<sup>20</sup> But the capital stock of a foreign corporation owned in a State is not liable to taxation.<sup>21</sup> A tax by a State of evidences of debt secured by property out of the State is valid.<sup>22</sup> A State may tax the gross receipts of a resident railroad<sup>23</sup> or express,<sup>24</sup> or steamship company though engaged in foreign or inter-state commerce;<sup>25</sup> it may tax premiums in the State on insurance of foreign goods;<sup>26</sup> it may tax ferry boats having their *situs* in the State,<sup>27</sup> and other vessels registered as U. S. vessels in the State, though engaged in foreign commerce;<sup>28</sup> it may tax products of the State though intended for another State.<sup>29</sup> But the taxing power cannot be exercised beyond the State, and a tax on receipts of a foreign sleeping car company is not valid.<sup>30</sup> A State tax on exports as an inspection charge is valid.<sup>31</sup>

1 Lord v. Steamship Co. 102 U. S. 541.

2 Commonwealth v. Philadelphia etc. Ry. Co. 1 Pearson, 379.

3 County of Mobile v. Kimball, 102 U. S. 691; Ouachita etc. Co. v. Aiken, 16 Fed. Rep. 800.

4 Wilson v. McNamee, 102 U. S. 572.

5 People v. Kamakee R. I. Co. 14 Chic. L. N. 341.

6 Huse v. Glover, 11 Biss. 314.

7 Huse v. Glover, 11 Biss. 314.

8 Nelson v. Cheboygan Nav. Co. 44 Mich. 7.

9 Harrigan v. Conn. R. L. Co. 11 Cent. L. J. 515.

10 Hatch v. Willamette I. B. Co. 7 Sawy. 127.

11 Talbot Co. v. Queen Anne's Co. 50 Md. 246.

12 Escanaba etc. Co. v. Chicago, 12 Fed. Rep. 777.

13 Transportation Co. v. Parkersburg, 107 U. S. 691.

14 King v. Greenway, 71 N. Y. 413.

- 15 *People v. Wabash etc. Ry. Co.* 104 Ill. 476.
- 16 *Chicago etc. Ry. Co. v. People*, 105 Ill. 657.
- 17 *Fry v. State*, 63 Ind. 562.
- 18 *Denver etc. Ry. Co. v. Atchison etc. Ry. Co.* 15 Fed. Rep. 650 ;  
*Boardman v. L. S. & M. Ry. Co.* 84 N. Y. 157.
- 19 *Kirtland v. Hotchkiss*, 100 U. S. 497.
- 20 *Commonwealth v. Central Petroleum Co.* 1 Pearson, 373.
- 21 *Commonwealth v. Gloucester F. Ins. Co.* 98 Pa. 105 ; but see  
dissenting opinion, *Green*, J. 98 Pa. 117.
- 22 *Kirtland v. Hotchkiss*, 100 U. S. 491.
- 23 *Commonwealth v. Buffalo & E. Ry. Co.* 2 Pearson, 576.
- 24 *American U. Exp. Co. v. St. Joseph*, 66 Mo. 675.
- 25 *Commonwealth v. Philadelphia etc. Ry. Co.* 12 Week. Note Cas.  
152 ; *Lightburne v. Taxing Dist.* 4 Lea, 219.
- 26 *Ins. Co. v. Commonwealth*, 87 Pa. 175 ; *People v. Nat. Ins. Co.* 27  
Hun, 188.
- 27 *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365.
- 28 *Gunther v. Baltimore*, 55 Md. 459.
- 29 *Commonwealth v. Danville etc. Co.* 2 Pearson, 400.
- 30 *Indiana v. Pullman Palace Car Co.* 11 Bliss. 561.
- 31 *Turner v. Maryland*, 107 U. S. 38.

**Licenses.**—States cannot in the exercise of their power to license discriminate in favor of their own products, and against the products and manufactures of other States.<sup>1</sup> A State may require all traders to pay a license,<sup>2</sup> if it affect both residents and non-residents equally ;<sup>3</sup> so it may impose a privilege tax, or license on particular classes of business men, as on all wholesale merchants,<sup>4</sup> or on all traveling merchants<sup>5</sup> and peddlers.<sup>6</sup> So in the exercise of its police power it may require a license tax from express companies for doing business, though solely engaged in inter-state commerce,<sup>7</sup> it may levy a privilege tax on foreign companies.<sup>8</sup> It may impose a tax for ferrying on navigable rivers.<sup>9</sup> But a license tax is unconstitutional which discriminates against products of other States,<sup>10</sup> as a license tax on peddlers or traveling agents who sell foreign goods.<sup>11</sup> A license imposed as a sanitary measure on the removal of dead bodies is constitutional.<sup>12</sup>

1 *Vines v. State*, 67 Ala. 73 ; *Powell v. State*, 69 Ala. 10

2 *Charleston v. Oliver*, 16 S. C. 47.

3 *Carson v. State*, 57 Md. 251.

4 *Galveston Co. v. Gorham*, 49 Tex. 279.

- 5 *In re Rudolph*, 6 Sawy. 205 ; *Ex parte Robinson*, 12 Nev. 263.
- 6 *Howe S. M. Co. v. Cage*, 12 Chic. L. N. 252.
- 7 *Memphis etc. Co. v. Nolan*, 14 Fed. Rep. 532.
- 8 *Walker v. Springfield*, 94 Ill. 364.
- 9 *Wiggins F. Co. v. East St. Louis*, 102 Ill. 580 ; S. C. 107 U. S. 365.
- 10 *Vines v. State*, 67 Ala. 73 ; *Powell v. State*, 63 Ala. 10.
- 11 *Webber v. Virginia*, 103 U. S. 344 ; *In re Watson*, 15 Fed. Rep. 511 ; *Vines v. State*, 67 Ala. 73 ; *State v. Furbush*, 72 Me. 493.
- 12 *In re Wong Yung Quy*, 6 Sawy. 442.

**Police powers of State.** — This clause does not interfere with the right of the States to enact inspection, quarantine, and health laws.<sup>1</sup> Inspection laws, if reasonable, are not burdens on trade, but are a proper police regulation.<sup>2</sup> A State may regulate the sale of dangerous articles, as petroleum, below a certain standard ;<sup>3</sup> provide for speed, and stoppage at stations, of railroad trains.<sup>4</sup> It may regulate the introduction of game during certain seasons ;<sup>5</sup> prohibit sale of intoxicating liquors ;<sup>6</sup> forbid imposition by brokerage in railroad tickets.<sup>7</sup> The power to license is a police power, and the State may provide licenses for ferrying on navigable rivers ;<sup>8</sup> may prohibit the use of a navigable river for floating lumber unless bound in rafts ;<sup>9</sup> may license corporations for the privilege of doing business in the State.<sup>10</sup> The police power cannot obstruct foreign or interstate commerce ; nor interfere with it in the way of quarantine beyond what is absolutely necessary for proper protection.<sup>11</sup> It may as a sanitary measure regulate the removal of dead bodies.<sup>12</sup> But a State statute prohibiting the importation of cattle of certain kinds is unconstitutional, this being more than an exercise of its police powers,<sup>13</sup> which would extend only to a quarantine of sick animals.<sup>14</sup> No State in the exercise of its police power can discriminate in favor of its own, and against products of other States.<sup>15</sup> A State statute prohibiting labor on Sunday so far as it affects inter-state and foreign commerce is unconstitutional, and not a regulation of commerce.<sup>16</sup>

1 *Wiggins F. Co. v. East St. Louis*, 107 U. S. 365.

2 *Turner v. State*, 107 U. S. 38 ; S. C. 55 Md. 240.

3 *Clark v. Board of Health*, 11 Chic. L. N. 194.

- 4 *Chicago etc. Ry. Co. v. People*, 105 Ill. 657.
- 5 *Magner v. People*, 97 Ill. 320.
- 6 *State v. Tucker*, 53 Iowa, 496.
- 7 *Fry v. State*, 63 Ind. 552.
- 8 *Wiggins F. Co. v. East St. Louis*, 102 Ill. 560 ; S. C. 107 U. S. 365.
- 9 *Harrigan v. Connecticut L. Co.* 11 Cent. L. J. 515.
- 10 *Walker v. Springfield*, 94 Ill. 364.
- 11 *Salzenstein v. Mavis*, 91 Ill. 391 ; *Vines v. State*, 67 Ala. 73 ; *Powell v. State*, 69 Ala. 10.
- 12 *In re Wong Yung Quy*, 6 Sawy. 442.
- 13 *Salzenstein v. Mavis*, 91 Ill. 391 ; *Chicago etc. Ry. Co. v. Erickson*, 91 Ill. 613 ; *Jarvis v. Riffin*, 94 Ill. 164 ; *Gilmore v. Hannibal & St. J. Ry. Co.* 67 Mo. 323 ; *Urton v. Sherlock*, 75 Mo. 247.
- 14 *Salzenstein v. Mavis*, 91 Ill. 391 ; *Chicago etc. Ry. Co. v. Erickson*, 91 Ill. 613.
- 15 *Vines v. State*, 67 Ala. 73 ; *Powell v. State*, 69 Ala. 10.
- 16 *Dinsmore v. Board of Police*, 12 Abb. N. C. 436.

**Indian tribes.**—The power to regulate commerce with Indian tribes includes not only traffic but also intercourse with the tribes, and the personal conduct of other races with them,<sup>1</sup> and is not limited by State lines or governments, but may be exercised wherever the subject "Indian Tribes" exists.<sup>2</sup> A regulation by Congress vesting in the tribes the right to try their own criminals is constitutional.<sup>3</sup>

1 U. S. v. Martin, 14 Fed. Rep. 821.

2 U. S. v. Bridleman, 8 Pac. C. L. J. 108 ; U. S. v. Berry, 26 Int. Rev. Rec. 405.

3 *In re Crow Dog*, 16 Chic. L. N. 125.

**Sec. 8, Sub. 4. Bankruptcy.**—The United States and the several States have a concurrent power to enact laws on the subject of bankruptcies.<sup>1</sup> In the absence of congressional legislation the power is in the States to pass insolvent laws.<sup>2</sup> On the passage of a general law by Congress the State right is not extinguished, but is merely suspended during its continuance,<sup>3</sup> and with respect to matters of which the general law declines to take jurisdiction the State law remains in full force.<sup>4</sup> A State law passed during the existence of a general bankrupt law is not void, but is merely suspended during the operation of the general law.<sup>5</sup> Congress has power under this clause to declare how much of the debtor's property shall be

exempt from execution, and in absence of such action the State may pass exemption laws.<sup>6</sup> State insolvency laws have no extra territorial effect so as to operate on the rights of non-residents of the State.<sup>7</sup>

1 Boedefeld v. Reed, 55 Cal. 299.

2 Mather v. Nesbit, 13 Fed. Rep. 872; Boedefeld v. Reed, 55 Cal. 299; Baum v. Raphael, 56 Cal. 361; Seattle Coal Co. v. Thomas, 57 Cal. 197; Damon's Appeal, 70 Me. 143; Palmer v. Hixon, 74 Me. 447; Wendell v. Lebon, 30 Minn. 234.

3 Boedefeld v. Reed, 55 Cal. 299.

4 Wendell v. Lebon, 30 Minn. 234.

5 Seattle Coal Co. v. Thomas, 57 Cal. 197; Baum v. Raphael, 56 Cal. 361; Palmer v. Hixon, 74 Me. 447.

6 Salentine v. Fink, 8 Biss. 503.

7 Mather v. Nesbit, 13 Fed. Rep. 872.

**Sec. 8, Sub. 7. Postal regulations.**—Congress derives power under this provision to adopt mail regulations, and in so doing may punish embezzlement of the mails;<sup>1</sup> it may forbid transportation in the mails of circulars concerning lotteries.<sup>2</sup> The fact that such acts were not prohibited prior to this grant of power to Congress does not abridge such power.<sup>3</sup>

1 U. S. v. McCready, 11 Fed. Rep. 225.

2 In re Jackson, 14 Blatchf. 245.

3 In re Jackson, 14 Blatchf. 245.

**Sec. 8, Sub. 8. Rights secured.**—It is only to authors or inventors, or to their representatives, that Congress is authorized to grant exclusive rights; one who is simply owner of the means of producing the article, as the proprietor of lithographic plates, has no exclusive privilege to a copyright or patent.<sup>1</sup> The privilege is exclusively with the author or inventor,<sup>2</sup> and even the government cannot make use thereof without his license.<sup>3</sup> Photographs are a proper subject of copyright;<sup>4</sup> so also are lithographic plates.<sup>5</sup> The power to regulate these rights is solely in Congress, and State statutes attempting to regulate the sale of patent rights are unconstitutional;<sup>6</sup> but the power to regulate the sale or use of patented articles does reside in the State as a police power,<sup>7</sup> and a State law prohibiting the sale of patent butter or oleomargarine is valid.<sup>8</sup> Trade marks

are neither inventions, writings, nor discoveries, and legislation relating thereto by Congress is not legislation in favor of authors or inventors, and therefore void.<sup>9</sup>

- 1 *Yeungling v. Schille*, 20 Blatchf. 452.
- 2 *In re Brosnahan, Jr.* 18 Fed. Rep. 62.
- 3 *McKeever v. U. S.* 14 Ct. of Cl. 396.
- 4 *Schreiber v. Thornton*, 17 Fed. Rep. 603; *Sarony v. Burrow G. L. Co.* 17 Fed. Rep. 591.
- 5 *Yeungling v. Schille*, 20 Blatchf. 452.
- 6 *In re Robinson*, 2 Bliss. 309; *Woolen v. Banker*, 2 Flap. 33; *Crittenden v. White*, 23 Minn. 24; *Wilch v. Phelps*, 14 Neb. 134; *contra*, *Tod v. Wick Bros.* 30 Ohio St. 370; *Haskell v. Jones*, 86 Pa. St. 173.
- 7 *Wilch v. Phelps*, 14 Neb. 134.
- 8 *Palmer v. State*, 3 Ohio L. J. 708; *In re Brosnahan, Jr.* 18 Fed. Rep. 62.
- 9 *Trade Mark Cases*, 100 U. S. 82; *Leidersdorf v. Flint*, 8 Bliss. 327.

**Sec. 8, Sub. 9. Inferior courts.**—Power to constitute inferior courts endows Congress with the power to define their jurisdiction.

*De Groot's Case*, 7 Ct. of Cl. 2.

**Sec. 8, Sub. 16. Militia.**—The power is in Congress to establish a uniform system of militia throughout the United States.<sup>1</sup> But this power is not exclusive; the States have a concurrent power, and only repugnant and interfering State legislation must give way to the law of Congress.<sup>2</sup> The States may organize and maintain a distinct militia for their own purposes, if not in conflict with congressional regulations.<sup>3</sup>

- 1 *People v. Affeldt*, 11 Chic. L. N. 408.
- 2 *Dunne v. People*, 94 Ill. 120; *People v. Affeldt*, 11 Chic. L. N. 408.
- 3 *Dunne v. People*, 94 Ill. 120.

**Sec. 8, Sub. 17. District Columbia.**—An inhabitant of the District of Columbia is not a citizen of a State.

*Cissel v. McDonald*, 16 Blatchf. 150.

**Sec. 8, Sub. 18. Incidental Powers.**—The word "necessary" does not mean indispensably necessary, but admits the use of any means conducive to the exercise of any power granted by the Constitution and leaves the choice of means to Congress.<sup>1</sup> Every valid act of Congress must find in the Constitu-

tion some warrant for its passage.<sup>2</sup> A grant of power is construed according to its reasonable import, and is not controlled by reference to what existed at the time when the Constitution was adopted.<sup>3</sup> To carry into execution its powers, Congress may create, define, and punish crimes and offenses against the United States;<sup>4</sup> it may forbid officers to receive money or property for political purposes;<sup>5</sup> it may require the personal attendance of witnesses;<sup>6</sup> it may constitute national banks as an agency of, and a proper end to the administration of the government.<sup>7</sup>

1 In re Jackson, 14 Blatchf. 249.

2 U. S. v. Harris, 106 U. S. 629.

3 In re Jackson, 14 Blatchf. 249.

4 U. S. v. Hale, 98 U. S. 357.

5 Ex parte Curtis, 106 U. S. 371.

6 Lilley's Case, 14 Ct. of Cl. 530.

7 Pollard v. State, 65 Ala. 628.

**Sec. 9, Sub. 1. Migration and Importation.** — The word "migration" as here used applies only to free persons, and the word "importation" to slaves.

People v. Campagnie Generale, 107 U. S. 59.

**Sec. 9, Sub. 3. Ex post facto laws.** — A statute imposing a punishment for an act which was not punishable at the time it was committed is an *ex post facto* law. This clause applies not only to criminal prosecutions, but also to cases for the recovery of penalties and forfeitures.

U. S. v. Hughes, 8 Ben. 29.

**Sec. 9, Sub. 4. Direct taxes.** — Direct taxes comprehend only capitation taxes, and taxes on real estate.<sup>1</sup> Such taxes must be levied by the rule of apportionment.<sup>2</sup> A tax on incomes is not a capitation or direct tax.<sup>3</sup> A tax on alien passengers from a foreign port is not a capitation tax.<sup>4</sup>

1 Springer v. U. S. 102 U. S. 586.

2 De Treville v. Smalls, 98 U. S. 517.

3 Springer v. U. S. 102 U. S. 586.

4 The Head Money Cases, 18 Fed. Rep. 135.



**Sec. 9, Sub. 5. Tax on exports.**—An act imposing a tax on freight sent out of a State is void.

Commonwealth v. Delaware L. & W. Ry. 1 Pearson, 336; Commonwealth v. Erie Ry. Co. 1 Pearson, 345; Commonwealth v. Pennsylvania etc. R. Ry. 1 Pearson, 379.

**Sec. 9, Sub. 6. State commerce.**—No State can impose on persons or products from other States for sale or use therein, more onerous burdens than are imposed on its own.<sup>1</sup> A statute providing that lime imported from one State must be packed in a specified manner before it can be sold in another, is void.<sup>2</sup>

1 Guy v. Baltimore, 100 U. S. 434.

2 Higgins v. Lime, 130 Mass. 1.

**Sec. 9, Sub. 7. Public moneys.**—No money can be paid except on appropriation, but because the appropriation out of which the debt should have been paid has lapsed, is no defense to the claim.<sup>1</sup> Congress has the power, nevertheless, to prevent payment of claims by refusing to appropriate therefor.<sup>2</sup> This provision is only a restriction on the treasury department, and does not restrain Congress from involving the government in liabilities to pay money to any extent.<sup>3</sup>

1 Brigg's Case, 15 Ct. of Cl. 48.

2 Hart's Case, 16 Ct. of Cl. 459.

3 Collin's Case, 14 Ct. of Cl. 563; S. C. 15 Ct. of Cl. 22; Mitchell's Case, 18 Ct. of Cl. 281.

**Sec. 10, Sub. 1. Ex post facto laws—Treaties.**—An *ex post facto* law is one which is enacted after an offense is committed and which in relation to it or its consequences alters the situation of the accused to his disadvantage.<sup>1</sup> This applies not merely to criminal prosecutions, but also to cases for the recovery of penalties and forfeitures,<sup>2</sup> but does not apply to civil laws of a retrospective character.<sup>3</sup> A statute authorizing the correction of an erroneous sentence through a clerical error, is not an *ex post facto* law.<sup>4</sup> A statute changing the punishment for murder from hanging to hard labor and subsequent hanging is an *ex post facto* law.<sup>5</sup> The repeal of a law providing that on failure to convict of one offense, accused shall be deemed acquitted as to that offense, is *ex post facto*.<sup>6</sup> What the United States has

not power to do by treaty cannot be done at all as the States are expressly prohibited therefrom.<sup>1</sup>

- 1 *Kring v. Missouri*, 107 U. S. 221.
- 2 *U. S. v. Hughes*, 8 Ben. 29.
- 3 *Esser v. Spaulding*, 17 Nev. 289.
- 4 *Ex parte Bethurum*, 66 Mo. 543.
- 5 *In re Petty*, 22 Kan. 477.
- 6 *Kring v. Missouri*, 107 U. S. 221.
- 7 *Hauenstein v. Lynham*, 100 U. S. 483.

**Obligation of contracts.** — No State can by any expression of legislative will or any agency whatever lessen or impair the legal effect or obligation of any contract valid when entered into.<sup>1</sup> Rights arising from tort are not protected under this clause.<sup>2</sup> Judgments on torts are considered as torts, not as contracts.<sup>3</sup> The "obligation of a contract" is its binding force on the party making it, having reference to the laws in existence when the contract is made.<sup>4</sup> The courts have no power to annul a statute simply because it impairs the obligation of a contract, nor until the question is presented in some suit for enforcement of the contract.<sup>5</sup> This clause embraces all the laws alike which affect the validity, construction, discharge, and enforcement of contracts.<sup>6</sup> This provision does not apply where the statute is a public law relative to a public subject in the legislative power, and involving public rights and welfare of the entire community.<sup>7</sup> Marriage, though a contract, is more than a civil contract, and is not affected by this clause forbidding impairment of the obligation of contracts.<sup>8</sup> But the ante-nuptial contract is one the obligation of which cannot be impaired.<sup>9</sup> The charters of municipal corporations for purposes of government are not contracts.<sup>10</sup> But a charter or franchise to a private corporation is a contract which cannot be impaired.<sup>11</sup> Repealing a charter under which vested rights have been acquired impairs the obligation of contract.<sup>12</sup> A mortgage confers a vested right which cannot be diminished.<sup>13</sup> A license is a mere naked grant of privilege without consideration, and may be revoked at pleasure; of such a character are licenses to practice medicine,<sup>14</sup> to main-

tain slaughter houses,<sup>15</sup> to retail liquor,<sup>16</sup> to maintain ~~ale v.~~ <sup>eries.</sup><sup>17</sup> But where the privilege becomes an absolute contract its obligation cannot be impaired.<sup>18</sup> Election and induction of a person into office does not create such a contract as is protected in its obligation,<sup>19</sup> nor does an act fixing the salary of an officer create a contract preventing reduction of such salary.<sup>20</sup> But an agreement to perform specified services for a certain compensation is a contract protected by this clause.<sup>21</sup> A State may alter the remedy or mode of enforcing a contract if it do not materially impair the rights of the parties thereto.<sup>22</sup>

1 Plock v. Cobb, 64 Ala. 127; Floyd v. Blanding, 54 Cal. 41; Cole v. La Chambre, 31 La. An. 41; Louisiana v. New Orleans, 32 La. An. 493; Danolds v. State, 89 N. Y. 36.

2 Parker v. Savage, 6 Lea, 406; Louisiana v. New Orleans, 32 La. An. 709.

3 Louisiana v. New Orleans, 32 La. An. 709; Peerce v. Kitzmuller, 19 W. Va. 564; White v. Shanklin, 19 W. Va. 533.

4 Edwards v. Williamson, 70 Ala. 145.

5 State v. Burke, 33 La. An. 498.

6 National Bank v. Sebastain Co. 5 Dill. 415.

7 Esser v. Spaulding, 17 Nev. 239.

8 Ex parte Kinne, 3 Hughes, 1.

9 Desnoyer v. Jordan, 27 Minn. 295.

10 Moore v. New Orleans, 32 La. An. 728; State Board v. Aberdeen, 36 Miss. 518.

11 State Lottery Co. v. Fitzpatrick, 3 Woods, 222; Ruggles v. People, 91 Ill. 256.

12 Greenwood v. Freight Co. 105 U. S. 13.

13 Lease v. Owen Lodge, 83 Ind. 493.

14 Aiken v. Board of Health 11 Chic. L. N. 35.

15 Crescent City Co. v. New Orleans, 33 La. An. 934.

16 Powell v. State, 69 Ala. 10; McKinney v. Salem, 77 Ind. 213.

17 Stone v. Mississippi, 101 U. S. 814.

18 State Lottery Co. v. Fitzpatrick, 3 Woods, 222.

19 Donahue v. Will Co. 100 U. S. 94; McComas v. Krug, 81 Ind. 327.

20 Knappen v. Barry Co. 46 Mich. 22; U. S. v. Fisher, 3 Sup. Ct. Rep. 154.

21 Hall v. Wisconsin, 103 U. S. 5.

22 Jones v. Davis, 6 Neb. 33; Blotz v. Bank, 87 Pa. St. 87.

**Impairment of obligation.**—The obligation of contracts cannot be impaired by the State or any of its agencies.<sup>1</sup> The charter of a private corporation is a contract, the obligation of

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cannot be impaired.<sup>2</sup> A charter granting a railroad company the right to regulate fares is impaired by a subsequent act fixing fares.<sup>3</sup> A grant of land in aid of a railroad company cannot be restricted or rescinded.<sup>4</sup> A grant in a charter of a monopoly of supplying water is a right which cannot be impaired.<sup>5</sup> A charter to draw lotteries, though generally a mere license, if it becomes an absolute contract cannot be impaired.<sup>6</sup> Exemption of a corporation from taxation is a binding contract, which cannot be impaired by subsequent taxation.<sup>7</sup> Where by law bonds or other obligations are entered into, and a tax provided for the payment thereof, the obligation cannot be impaired by the repeal of the tax.<sup>8</sup> So a repeal of a law providing a judgment tax is invalid as to prior judgments.<sup>9</sup> So an act removing the liability of corporations to suit on existing obligations is void.<sup>10</sup> A statute destroying the negotiability of corporation bonds is invalid.<sup>11</sup> Taxation of city bonds not liable thereto impairs them.<sup>12</sup> Where bonds were receivable for taxes a statute forbidding their receipt therefor impairs their value.<sup>13</sup> An act imposing conditions on holders of county warrants, or requiring acceptance of lower interest on them, is void.<sup>14</sup> Repeal of a statute authorizing issuance of bonds impairs the obligation of contracts made under it.<sup>15</sup> A mortgage is a contract which confers on the mortgagee a vested right which the State cannot diminish.<sup>16</sup> The right of a chattel mortgagee to take possession at any time cannot be impaired.<sup>17</sup> A mortgagor's agreement to pay taxes cannot be impaired by a subsequent act making all mortgagees liable for taxes.<sup>18</sup> A statute converting a wife's inchoate interest into a vested interest on sale to satisfy a mortgage impairs the contract with the mortgagee.<sup>19</sup> A statute repealing the right of redemption of land sold on execution is void.<sup>20</sup> A statute acting retrospectively so as to affect the husband's rights in his wife's property impairs the obligation of contracts as to existing creditors.<sup>21</sup> A law providing for copyright of opinions of courts which are free of publication is an impairment of rights.<sup>22</sup> The obligation of an ante-nuptial contract cannot be impaired by subsequent legislation.<sup>23</sup>

1 *Plock v. Cobb*, 64 Ala. 127; *Floyd v. Blanding*, 54 Cal. 41; *Cole v. La Chambre*, 31 La. An. 41; *Louisiana v. New Orleans*, 32 La. An. 493; *Fenn v. Kinsey*, 45 Mich. 446; *Danolds v. State*, 89 N. Y. 28.

2 *Greenwood v. Freight Co.* 105 U. S. 13; *State Lottery v. Fitzpatrick*, 3 Woods, 222; *Philadelphia etc. Ry. Co. v. Bowers*, 4 Houst. 506; *Ruggles v. People*, 91 Ill. 256; *Ward v. Farwell*, 97 Ill. 593.

3 *Philadelphia etc. Ry. Co. v. Bowers*, 4 Houst. 506.

4 *DeGraff v. St. Paul Ry. Co.* 23 Minn. 144; *Koenig v. Omaha etc. Ry. Co.* 3 Neb. 373; *Drew v. New York & E. Ry. Co.* 81½ Pa. St. 46.

5 *New Orleans W. W. Co. v. Tammany W. W. Co.* 14 Fed. Rep. 194.

6 *State Lottery v. Fitzpatrick*, 3 Woods, 222.

7 *Asylum v. New Orleans*, 105 U. S. 382; *People v. Soldiers' Home*, 95 Ill. 561; *State v. Baltimore etc. Ry. Co.* 48 Md. 49.

8 *Wolff v. New Orleans*, 103 U. S. 358; *Louisiana v. Jumel*, 107 U. S. 711; *George v. Ralls Co.* 3 McCrary, 181; *Maenhaut v. New Orleans*, 3 Woods, 1; *Chaffraix v. Board of Liquidation*, 11 Fed. Rep. 639; *Canova v. Commr.* 18 Fla. 512; *Moore v. New Orleans*, 32 La. An. 726; *State v. Young*, 29 Minn. 474; *Gibbs v. Green*, 54 Miss. 592; *Spaulding v. Andover*, 54 N. H. 38; *Rahway v. Munday*, 41 N. J. L. 395; *State v. Cardoza*, 8 S. C. 71; *State v. Pillsbury*, 16 Am. Law Rev. 563.

9 *U. S. v. Lincoln Co.* 5 Dill. 184; *U. S. v. Jefferson Co.* 5 Dill. 310; *Sawyer v. Concordia*, 12 Fed. Rep. 754; *State v. Police Jury*, 34 La. An. 95; *State v. New Orleans*, 34 La. An. 1149.

10 *National Bank v. Sebastian Co.* 5 Dill. 415.

11 *People v. Otis*, 90 N. Y. 46.

12 *DeVignier v. New Orleans*, 16 Fed. Rep. 11; *Antoni v. Greenhow*, 107 U. S. 769.

13 *Antoni v. Greenhow*, 107 U. S. 769; *Hartman v. Greenhow*, 102 U. S. 672.

14 *Brewer v. Otoe Co.* 1 Neb. 373; *McCracken v. Moody*, 33 Ark. 81.

15 *Kimball v. Mobile*, 3 Woods, 545.

16 *Lease v. Owen Lodge*, 83 Ind. 498; *Hillebert v. Porter*, 23 Minn. 490.

17 *Bolce v. Bolce*, 27 Minn. 371.

18 *Beckman v. Skaggs*, 59 Cal. 544.

19 *Parkham v. Vandeventer*, 82 Ind. 544; *Helphenstine v. Meredith*, 84 Ind. 1; *Voltz v. Rawles*, 85 Ind. 198.

20 *Travelers' Ins. Co. v. Brpuse*, 83 Ind. 62; *Hillebert v. Porter*, 23 Minn. 496.

21 *Bouknight v. Epting*, 11 S. C. 71.

22 *Matter of Head Notes*, 43 Mich. 641.

23 *Desnoyer v. Jordan*, 27 Minn. 295.

**What not an impairment of obligation.**—A State in the exercise of its police power may regulate corporate franchises, for health and good order of the community, if it do not impair the obligation of the contract with the corporation.<sup>1</sup> State statutes do not impair such contract, which regulate taking of

railroad tickets to prevent ticket brokerage,<sup>2</sup> fix maximum rates to prevent extortion,<sup>3</sup> provide for stations at certain places.<sup>4</sup> As a matter of public policy it may prohibit donations *inter vivos* beyond a certain sum.<sup>5</sup> Reasonable regulations making written instruments invalid, unless registered or recorded, do not impair the obligation of contracts.<sup>6</sup> A provision for funding invalid bonds, not being a contract, is not impaired by repealing the law therefor.<sup>7</sup> An agreement assuming to bind a town for subscriptions to railroad stock, being *ultra vires*, was not impaired by a prohibition of municipal aid to railroads.<sup>8</sup> A statute validating a debt incurred by a town on good consideration, though illegally, is constitutional.<sup>9</sup> A statute repealing all charters under which *bona fide* organization had not taken place, does not impair any vested right.<sup>10</sup> A statute granting a bridge franchise does not violate the contract with another bridge company already having a similar franchise.<sup>11</sup> Where the right is reserved, a charter may be altered or amended at will,<sup>12</sup> or may be dissolved.<sup>13</sup> Where a city may fix rates for a water company, a change in the manner of fixing them does not impair the obligation of contract.<sup>14</sup> A law requiring corporate creditors to act or be bound by the action of other creditors is valid.<sup>15</sup> A statute limiting the time within which railroad stock may issue is constitutional.<sup>16</sup> A statute fixing a county seat does not constitute a contract which the change of the county seat to another place will impair.<sup>17</sup> A statute providing for remission of penalties on taxes, if not collected in a certain time, is valid.<sup>18</sup> Taxation of a corporation is not a violation of the charter.<sup>19</sup> Where corporations exempt from taxation consolidate, the exemption does not pass by assignment, and a tax on the new corporation is valid.<sup>20</sup> A law fixing the tax on a corporation is not a contract that further taxes will not be levied.<sup>21</sup> The creation of a new town in place of an old one, without imposing any liability for the debts of the old one, does not impair the obligation of the contract with its creditors.<sup>22</sup> Where water works are exempt from execution, the exemption of bonds issued thereon is valid.<sup>23</sup> Where taxes are payable in coin, requiring the payment to be in gold coin

does not impair the contract.<sup>24</sup> The repeal of a judgment tax as to judgments on torts does not impair the obligation of contracts.<sup>25</sup> Mechanics' liens arising under a State statute are not protected by this clause being a statutory right fully in control of the State.<sup>26</sup>

- 1 Philadelphia W. & B. R. Co. v. Bowers, 4 Houst. 506.
- 2 Fry v. State, 63 Ind. 552.
- 3 Ruggles v. People, 91 Ill. 256.
- 4 Railroad Co. v. Hamersly, 104 U. S. 1.
- 5 Perrault v. Perrault, 32 La. An. 635.
- 6 Louisiana v. New Orleans, 102 U. S. 203; Vance v. Vance, 108 U. S. 99; S. C. 32 La. An. 186; Parrott v. Kumpf, 102 Ill. 423; Louisiana v. New Orleans, 32 La. An. 403.
- 7 Guaranty Co. v. Board of Liquidation, 105 U. S. 622; Durkee v. Board of Liquidation, 103 U. S. 646.
- 8 Railroad Co. v. Falconer, 103 U. S. 821.
- 9 Read v. Plattsmouth, 2 Sup. Ct. Rep. 208; Gross v. U. S. Mortgage Co. 2 Sup. Ct. Rep. 940.
- 10 Chincleclamouche Land Co. v. Commonwealth, 100 Pa. St. 438.
- 11 Wright v. Nagle, 101 U. S. 791.
- 12 Sinking Fund Cases, 99 U. S. 700; Weldenger v. Spruance, 101 Ill. 278; Close v. Greenwood Cemetery, 107 U. S. 466.
- 13 Chicago L. I. Co. v. Auditor, 101 Ill. 82.
- 14 Spring V. W. W. v. Board of Supervisors, 61 Cal. 3; S. C. 8 Sawy. 555.
- 15 Gilfillan v. Union Canal Co. 29 Alb. L. J. 16.
- 16 People v. Granville, 104 Ill. 285.
- 17 Newton v. Commissioners, 100 U. S. 547.
- 18 Beecher v. Webster Co. 50 Iowa, 538.
- 19 Memphis Gaslight Co. v. Taxing District, 3 Sup. Ct. Rep. 205.
- 20 Railroad Co. v. Georgia, 98 U. S. 359; Louisville & N. R. Co. v. Palmes, 3 Sup. Ct. Rep. 193.
- 21 Commonwealth v. Erie Ry. Co. 1 Pearson, 345; Reclamation District v. Hagar, 6 Sawy. 567.
- 22 State v. Lake City, 25 Minn. 404.
- 23 New Orleans v. Morris, 105 U. S. 600.
- 24 Reclamation District v. Hagar, 6 Sawy. 567.
- 25 Louisiana v. New Orleans, 3 Sup. Ct. Rep. 211.
- 26 Woodbury v. Grimes, 1 Colo. 100.

**Impairment of remedy.**—States may alter the form of remedy on contracts, or prescribe new remedies where the new is as adequate as the old.<sup>1</sup> But where the new remedy or form lessens the efficacy of the remedy it impairs the obligation of prior contracts.<sup>2</sup> But a change in the law giving a

more speedy remedy is valid.<sup>3</sup> The repeal of a law allowing suit against the State, being in the power of the State, does not impair contracts with it.<sup>4</sup> Abolition of imprisonment for debt does not impair the obligation of the contract.<sup>5</sup> A law abolishing distress for rent is only unconstitutional where the right accrued prior to the law.<sup>6</sup> Where there are two remedies, the abolition of one of them is valid.<sup>7</sup> A provision that in money judgments the decree shall be for the judgment and interest is valid.<sup>8</sup> A law requiring corporation creditors to act or be bound by the action of other creditors is constitutional.<sup>9</sup> Where the power is reserved, an act changing the liability of stockholders for debts of a corporation is valid.<sup>10</sup> That final judgment in ejectment shall not be rendered until improvements are paid for is a valid provision.<sup>11</sup> The State cannot remove from a county the liability to suit as to debts already accrued.<sup>12</sup> The repeal of a law authorizing a judgment tax on municipal corporations is void, and impairs the remedy of existing creditors.<sup>13</sup> But the repeal of a judgment tax as to judgments on torts is valid.<sup>14</sup> The lien being taken from a judgment does not impair the judgment.<sup>15</sup> A requirement for registration of judgments before enforcement is valid.<sup>16</sup> A statute increasing amount of property exempt from execution, as to existing debts impairs the obligation of contract.<sup>17</sup> So far as State insolvent laws impair the rights of existing creditors they are invalid.<sup>18</sup> Where water works are exempt from execution the exemption of bonds issued thereon is valid.<sup>19</sup>

1 *Antoni v. Greenhow*, 107 U. S. 769; *Edward v. Williams*, 70 Ala. 145; *Jones v. Davis*, 6 Neb. 33; *Bletz v. Bank*, 87 Pa. St. 87.

2 *Louisiana v. New Orleans*, 102 U. S. 203; *New Orleans v. Morris*, 3 Woods, 115.

3 *Richardson v. Akm*, 87 Ill. 138; *Chapin v. Billings*, 91 Ill. 539.

4 *Railroad Co. v. Tennessee*, 101 U. S. 337; *Railroad Co. v. Alabama*, 101 U. S. 832.

5 *Penniman's Case*, 103 U. S. 714.

6 *Madland v. Benland*, 24 Minn. 372.

7 *State v. Gaillard*, 9 Rep. 725.

8 *Fleming v. Holt*, 12 West Va. 144.

9 *Gilfillan v. Union Canal Co.* 29 Alb. L. J. 16.

10 *Weldenger v. Spruance*, 101 Ill. 278.

11 *Griswold v. Bragg*, 18 Blatchf. 202.



12 *National Bank v. Sebastian Co.* 5 Dill. 415.

13 *U. S. v. Lincoln Co.* 5 Dill. 184; *U. S. v. Jefferson Co.* 5 Dill. 310; *Sawyer v. Concordia*, 12 Fed. Rep. 754; *U. S. v. Port of Mobile*, 12 Fed. Rep. 768; *State v. Police Jury*, 34 La. An. 95; *Louisiana v. New Orleans*, 34 La. An. 1149.

14 *Louisiana v. New Orleans*, 3 Sup. Ct. Rep. 211; 34 La. An. 1149.

15 *Moore v. Holland*, 16 S. C. 15.

16 *Louisiana v. New Orleans*, 102 U. S. 203.

17 *Wilson v. Brown*, 58 Ala. 62; *Johnson v. Fletcher*, 54 Miss. 628.

18 *Schwartz v. Drinkwater*, 70 Me. 400; *Mather v. Nesbit*, 13 Fed. Rep. 872.

19 *New Orleans v. Morris*, 105 U. S. 600.

**Sec. 10, Sub. 2. Imports and exports.** — The word “imports” as here used does not apply to articles carried from one State to another, but only to articles imported from foreign countries.<sup>1</sup> A tax on peddlers and merchants selling foreign goods by sample is not a tax on imports.<sup>2</sup> A statute levying a license charge for removal of dead bodies is not an export charge; a corpse is not property.<sup>3</sup> Lumber purchased for and awaiting shipment is already an export, and within the protection of this clause.<sup>4</sup> An outrage charge on exported tobacco, which is in the nature of an inspection duty is valid.<sup>5</sup> The words “imports,” “exports,” and “inspection laws” as used in this clause have exclusive reference to property, and not to persons.<sup>6</sup> A tax on foreign passengers as an inspection charge is not authorized by this clause, and is void.<sup>7</sup>

1 *Guy v. Baltimore*, 100 U. S. 434; *Machine Co. v. Gage*, 100 U. S. 676; *In re Rudolph*, 6 Sawy. 205.

2 *Machine Co. v. Gage*, 100 U. S. 434; *In re Rudolph*, 6 Sawy. 205.

3 *In re Wong Yung Quy*, 6 Sawy. 442.

4 *Clarke v. Clarke*, 3 Woods, 408.

5 *Turner v. State*, 55 Md. 240; S. C. 107 U. S. 38.

6 *People v. Champagne Generale*, 107 U. S. 59; S. C. 20 Blatchf. 296.

7 *People v. Pacific Mail S. S. Co.* 8 Sawy. 640; *People v. Champagne*, 107 U. S. 38; S. C. 55 Md. 240.

**Sec. 10, Sub. 3. Tonnage duties.** — Tonnage duties can be levied only by the general government.<sup>1</sup> A State act imposing a tax on tonnage, passing through, from, or to a State or foreign country, be it on railway, canal, river, or otherwise, is unconstitutional.<sup>2</sup> The exaction of a wharfage charge for the

use of its own wharves is not a tonnage tax, and may be levied by a State or its authorized agents;<sup>3</sup> but a collection of such duties in absence of ownership of the wharves is unconstitutional, as levying a tonnage duty.<sup>4</sup> The power of the States over wharfage includes the power to discriminate between different vessels and of different occupations.<sup>5</sup> But a charge for lying at anchor in the harbor, or for entering the port, is not of the same nature as a wharfage charge, but is a tonnage duty, and not in the power of the State.<sup>6</sup> A State charge for use of improvements, as locks in a navigable river, or for use of a river made navigable under authority of Congress, is not a tonnage tax, but is a valid toll therefor,<sup>7</sup> though charges be based on the tonnage of the vessel.<sup>8</sup> A State license fee for ferrying on a navigable river is not a tonnage tax, but is a police regulation.<sup>9</sup> A tax on a vessel as personal property, where it is owned, is not a tonnage tax and is valid.<sup>10</sup>

1 *Transportation Co. v. Parkersburg*, 107 U. S. 691.

2 *Commonwealth v. Erie Ry. Co.* 1 Pearson, 345.

3 *People v. Pacific Rolling Mills*, 60 Cal. 327; *Packet Co. v. St. Louis*, 100 U. S. 423; *Vicksburg v. Tobin*, 100 U. S. 430; *Packet Co. v. Cattleburg*, 108 U. S. 559; *Transportation Co. v. Parkersburg*, 107 U. S. 691; *Ouachita v. Aiken*, 16 Fed. Rep. 891; *The Jno. M. Welch*, 9 Ben. 507; *Northwestern Ry. Co. v. St. Louis*, 12 Chic. L. N. 216.

4 *People v. Pacific Rolling Mills*, 60 Cal. 327.

5 *The John M. Welch*, 9 Ben. 507.

6 *Transportation Co. v. Parkersburg*, 107 U. S. 691.

7 *Carondelet C. & N. Co. v. Parker*, 29 La. An. 430; *Huse v. Glover*, 11 Biss. 314.

8 *Huse v. Glover*, 11 Biss. 314.

9 *Wiggins v. East St. Louis*, 102 U. S. 560.

10 *Transportation Co. v. Wheeling*, 99 U. S. 273.

**Agreements or compacts—Troops.**—The States cannot, without the consent of Congress, levy war, or make peace, or enter into a compact with any other State.<sup>1</sup> An organization and keeping by a State of active militia is not a keeping of troops in time of peace.

1 *State of New Hampshire v. State of Louisiana*, 2 Sup. Ct. Rep. 176.

2 *Dunne v. People* 94 Ill. 120.

## ARTICLE II.

**Sec. 1, Sub. 2. Electors.**—The franchises and privileges of the office of elector of President and Vice-President originate and are exercised under the Constitution and laws of the United States, and not those of the State, though the power to appoint to the office is with the State.

State v. Bowen, 8 S. C. 400.

**Sec. 2, Sub. 1. Powers of President.**—The President as commander-in-chief during the war had power to employ secret agents, and in pursuance thereof to direct payment therefor out of the proper fund.<sup>1</sup> The President in the exercise of his power to pardon may act on pardons immediately, or may first refer them to the executive departments.<sup>2</sup> The power of the President extends only to crimes and offenses; property confiscated by judgment is beyond the reach of judicial clemency;<sup>3</sup> but if a pecuniary penalty has not passed into the treasury a pardon will work a remission thereof.<sup>4</sup> An act which impairs the effect of a pardon by the President is void,<sup>5</sup> but an act of Congress which provides certain penalties, and also for the remission of the same by the Secretary of the Treasury, does not infringe this power.<sup>6</sup>

1 Totten's Case, 11 Ct. of Cl. 182.

2 Anonymous, 14 Opin. Atty.-Gen. 20.

3 Knote's Case, 10 Ct. of Cl. 397.

4 Anonymous, 14 Opin. Atty.-Gen. 20.

5 Klein's Case, 7 Ct. of Cl. 240; Witkowski's Case, 7 Ct. of Cl. 393.

6 The Laura, 19 Blatchf. 562.

**Sec. 2, Sub. 2. Appointment and removal.**—Appointments to office can only be made by the Executive in the manner provided, and not by congressional enactment.<sup>1</sup> In absence of an act providing for the appointment of vice-consuls, they can only be appointed with the advice and consent of the Senate.<sup>2</sup> The power to appoint includes the power to remove, and the power to remove is vested solely in the President, without necessity of consent of the Senate.<sup>3</sup> Congress may retire an officer, or

change his rank on active or retired list without conflict herewith.<sup>4</sup> The Commissioner of Pensions is not the "head of a department" as here used.<sup>5</sup> The word "inferior" as used in this provision means subordinate or inferior to those officers in whom the power of appointment may be vested.<sup>6</sup> A receiver of a national bank being appointed by the head of a department, is an inferior officer in the meaning hereof.<sup>7</sup> Supervisors of election are inferior officers, and the vesting by Congress of the appointment of them in the circuit courts is constitutional and the duty on the court is obligatory.<sup>8</sup>

1 Wood's Case, 15 Ct. of Cl. 151.

2 Dainese's Case, 15 Ct. of Cl. 64.

3 McElrath's Case, 12 Ct. of Cl. 201; Collin's Case, 15 Ct. of Cl. 22.

4 Wood's Case, 18 Ct. of Cl. 761; S. C. 15 Ct. of Cl. 151; DeCellis Case, 13 Ct. of Cl. 117.

5 U. S. v. Germaine, 99 U. S. 508.

6 Collin's Case, 14 Ct. of Cl. 568.

7 Frellinghuysen v. Baldwin, 12 Fed. Rep. 395.

8 In re Citizens of Cincinnati, 2 Flip. 228.

### ARTICLE III.

**Sec. 1, Sub. 1. Judicial powers.** — The judicial power resting in courts cannot be denied them, and an act which prescribes rules of decision for the judicial department is unconstitutional and void.<sup>1</sup> Appeals from the exercise of a judicial power cannot be taken to an executive officer, but only to an appellate court.<sup>2</sup> United States courts (except the Supreme Court in certain cases) exercise only such jurisdiction as is conferred on them by Congress. An act adopting a State remedy is therefore valid.<sup>3</sup> Congress cannot give a United States court original jurisdiction in a cause involving an offense against the laws of the State, because the defense depends on the Constitution and laws of the United States.<sup>4</sup> A statute authorizing the removal of a cause when a party cannot enforce his rights in a State court is constitutional.<sup>5</sup> Territorial courts are not inferior courts in the meaning of this clause, and the provision that their salary shall not be diminished does not apply to territorial judges.<sup>6</sup>

- 1 Klein's Case, 7 Ct. of Cl. 240; Wikowski's Case, 7 Ct. of Cl. 393.
- 2 Gordon's Case, 7 Ct. of Cl. 1.
- 3 Ex parte Boyd, 105 U. S. 647.
- 4 State v. Davis, 12 S. C. 528.
- 5 Stauder v. West Virginia, 100 U. S. 803.
- 6 Fisher's Case, 15 Ct. of Cl. 323.

**Sec. 2, Sub. 1. Jurisdiction.**—By actions at law are meant those where legal rights are to be determined, as distinguished from equitable actions, or proceedings of an equitable nature.<sup>1</sup> Cases in law and equity embrace not only civil, but also criminal proceedings.<sup>2</sup> United States courts can have original jurisdiction only in cases where affirmative relief is demanded, based on the Constitution and laws of United States.<sup>3</sup> "Arising under the Constitution and laws of the United States" means that the case must arise on the provisions of the Constitution and construction thereof, as to right, privilege, claim, or defense asserted in a judicial proceeding.<sup>4</sup> A case arising out of a violation of the contract clause of the Constitution, is a case arising under the laws of the United States, and properly in the jurisdiction of these courts;<sup>5</sup> so also is a suit by a corporation created by the United States,<sup>6</sup> or a suit under an act of Congress for prosecutions against federal officers.<sup>7</sup> The admiralty and maritime jurisdiction extends to all public navigable water, whether influenced by the tide or not.<sup>8</sup> Suit by a State on claims assigned to it, and against another State, are not suits between States in the meaning of this clause.<sup>9</sup> It is under this clause that the power of the United States courts extends to controversies between citizens of different States.<sup>10</sup> This is the only grant of jurisdiction over cases to which foreign citizens or subjects are parties,<sup>11</sup> and an act of Congress conferring such jurisdiction is within its powers.<sup>12</sup>

1 Keith v. Rockingham, 18 Blatchf. 246; The B. F. Woolsey, 18 Blatchf. 344.

2 Tennessee v. Davis, 100 U. S. 257.

3 State v. Davis, 12 S. C. 528.

4 San Mateo Co. v. Southern P. R. R. Co. 7 Sawy. 517.

5 Sawyer v. Parish of Concordia, 12 Fed. Rep. 754; Keith v. Rockingham, 18 Blatchf. 246.

6 Union Pac. R. R. Co. v. McComb, 17 Blatchf. 510.

- 7 *Finley v. Satterfield*, 3 Woods, 504
- 8 *In re Jackson*, 14 Blatchf. 242.
- 9 *New Hampshire v. Louisiana*, 2 Sup. Ct. Rep. 176.
- 10 *Brooks v. Bailey*, 20 Blatchf. 85.
- 11 *Cissel v. McDonald*, 16 Blatchf. 150.
- 12 *State of Texas v. Lewis*, 12 Fed. Rep. 5.

**Sec. 2, Sub. 2. Appellate jurisdiction.**—Jurisdiction on appeal under this clause is only such as is conferred by Congress,<sup>1</sup> whose power in that regard extends to regulations of practice and procedure and forms of process, and provisions for specific modes of procedure are valid.<sup>2</sup> It is under this clause that the Supreme Court acquired jurisdiction to review writs of error.<sup>3</sup>

1 *The Francis Wright*, 105 U. S. 381.

2 *U. S. v. Union Pacific R. R. Co.* 98 U. S. 569; *The Francis Wright*, 105 U. S. 381.

3 *Ellis v. Norton*, 16 Fed. Rep. 4.

**Sec. 2, Sub. 3. Trial for crimes.**—Where on prosecution by information defendant refuses to plead, and the court enters a plea, an issue is formed for jury trial and must be so tried.<sup>1</sup> A proceeding to strike an attorney from the rolls for criminal offenses is not a criminal proceeding requiring indictment and trial by jury.<sup>2</sup>

1 *U. S. v. Borger*, 19 Blatchf. 250

2 *Ex parte Wall*, 107 U. S. 265.

## ARTICLE IV.

**Sec. 1, Sub. 1. Faith and credit of State acts.**—The effect of this clause on judgments is that it relates only to the validity and force of judgments rendered in one State when proved in another,<sup>1</sup> giving to them the conclusive effect of domestic judgments.<sup>2</sup> Judgments of the District of Columbia are within the protection of this clause.<sup>3</sup> But this clause does not impose on the States the duty to follow the decisions of other States on the construction of statutes of the latter.<sup>4</sup> An act of a State exempting the public debt from taxation is not such an act as will have full force on its debt held in another State.<sup>5</sup>

1 *Wiggins Ferry Co. v. C. & A. Ry. Co.* 3 McCrary, 609; *Claffin v. McDermott*, 12 Fed. Rep. 375.

2 *Bank v. Beebe & Co.* 53 Vt. 177; *Railroad Co. v. Mercer*, 11 Phila. 226; *Piedmont & A. L. I. Co. v. Ray*, 1 Matthews, 821.

3 *Savin v. Bond*, 57 Md. 28.

4 *Wiggins Ferry Co. v. C. & A. Ry. Co.* 3 McCrary, 609; *Miller v. Miller*, 18 Hun, 507.

5 *Bonaparte v. Tax Court*, 104 U. S. 592; S. C. 16 Am. Law Rev. 417.

**Sec. 2, Sub. 1. Privileges and immunities of citizens. —**  
 The main object of this clause is to place citizens of each State on the same footing with citizens of other States, and to inhibit discriminative legislation against them by other States.<sup>1</sup> A law which applies to all States is not unconstitutional, because in its operation it is different in different States.<sup>2</sup> A merchant paying taxes on goods in one State is not thereby exempt from taxation for selling them in another.<sup>3</sup> This clause while it confers the right to pass into other States for business purposes simply exempts the non-resident from higher taxes than resident citizens.<sup>4</sup> While in its power to license the State may discriminate between different classes of tradesmen, she cannot discriminate in favor of her own citizens and goods and against those of other States.<sup>5</sup> A State statute taxing peddlers who sell goods from other States is void;<sup>6</sup> so, also, is one taxing traveling agents from other States selling any merchandise.<sup>7</sup> Any State law imposing a discriminating tax on non-resident traders is void.<sup>8</sup> A State law providing for a license and denying it to non-resident peddlers is unconstitutional.<sup>9</sup> A State statute fixing a license tax on all traders, resident or non-resident, is valid.<sup>10</sup> The State as a police regulation may discriminate against one intoxicating liquor and not another, though the former be a product of another State.<sup>11</sup> An act discriminating against certain States in levying taxes on vessels entering a port is contrary to the spirit of this clause.<sup>12</sup> A State wharfage charge which discriminates between vessels of different kinds and occupations is valid,<sup>13</sup> but where the discrimination is in favor of boats of one State against those of another it is void.<sup>14</sup> This clause has lately been considered as a restriction on the States with regard to contracts

between their citizens and the remedies proper for their enforcement.<sup>15</sup>

- 1 U. S. v. Harris, 106 U. S. 629.
- 2 Darling v. Berry, 13 Fed. Rep. 659; Miller v. Miller, 18 Hun, 507.
- 3 Ex parte Thornton, 4 Hughes, 220.
- 4 Daniel v. Richmond, 13 Chic. L. N. 57.
- 5 Ex parte Thornton, 4 Hughes, 220.
- 6 State v. Turbush, 72 Me. 403.
- 7 McGuire v. Parker, 32 La. An. 832.
- 8 Guy v. Baltimore, 100 U. S. 434; Daniel v. Richmond, 78 Ky. 542.
- 9 In re Watson, 15 Fed. Rep. 511.
- 10 Carson v. State, 57 Md. 251.
- 11 State v. Stucker, 53 Iowa, 496.
- 12 Webb v. Dunn, 18 Fla. 721.
- 13 The Barge J. M. Welch, 9 Ben. 507.
- 14 The John M. Welch, 18 Blatchf. 54.
- 15 Keyser v. Rice, 47 Md. 203; March v. Steele, 9 Neb. 96; Olmstead v. Rivers, 9 Neb. 234.

**Sec. 2, Sub. 2. Fugitives from justice.**—This clause does not prohibit any State from passing laws providing for the capture of fugitives from justice,<sup>1</sup> nor does it prohibit an inquiry, before delivery, on the part of the State, whether the person charged is or is not a fugitive from justice.<sup>2</sup> One who commits a crime in another State, and then returns to his own State, is a fugitive.<sup>3</sup> This cause applies to those actually, and not merely constructively, in the State at the time of committing the act complained of.<sup>4</sup>

- 1 Ex parte Ammons, 34 Ohio St. 518.
- 2 Hartman v. Aveline, 63 Ala. 344.
- 3 Ex parte Swearingen, 13 S. C. 74.
- 4 Wilcox v. Nolze, 34 Ohio St. 520.

**Sec. 3, Sub. 2. Territorial property.**—Congress has absolute power over the Territories, and may legislate directly for the government thereof.<sup>1</sup> But while its authority extends to establishing territorial governments it cannot displace or diminish them.<sup>2</sup> It is within the powers of Congress to declare crimes and the punishment therefor in the Territories.<sup>3</sup> The power over the public lands is vested absolutely in Congress,



and it may make such regulations as are necessary,<sup>4</sup> and may dispose of it at will.<sup>5</sup>

1 *National Bank v. Yankton*, 101 U. S. 129.

2 *Reynolds v. People*, 1 Colo. 179.

3 *Reynolds v. U. S.* 98 U. S. 145.

4 *U. S. v. Tichenor*, 12 Fed. Rep. 415; *Chapman v. Quinn*, 53 Cal. 266.

5 *Chapman v. Quinn*, 56 Cal. 266.

**Sec. 4, Sub. 1. Protection against invasion.** — Where calls are made on the President, by two persons each claiming to be governor, to protect the State against invasion, it first devolves on the President to determine which person is the lawful incumbent of the office.

Anonymous, 14 Opin. Atty.-Gen. 391.

## ARTICLE VI

**Sec. 1, Sub. 2. Supreme law of the land.** — An unconstitutional law is void, and a provision in a State Constitution, in conflict with the National Constitution, is void, and of no effect.<sup>1</sup> Though equally the law of the land, an act of Congress, if in conflict with a prior treaty, will supersede it, the latest having effect.<sup>2</sup> A State has no power to limit, or in any way interfere with the operation of a treaty of the United States,<sup>3</sup> and State legislation in conflict with treaty stipulations is void.<sup>4</sup>

1 *Spring V. W. W. v. Bartlett*, 8 Sawy. 555; *Parrott's Case*, 6 Sawy. 349.

2 *The Head Money Cases*, 18 Fed. Rep. 135; *In re Pong Ah Lung*, 12 Pac. C. L. J. 67.

3 *Baker v. Portland*, 5 Sawy. 566.

4 *Parrott's Case*, 6 Sawy. 349; *Baker v. Portland*, 5 Sawy. 566.

## AMENDMENT I.

**Sec. 1. Religion.** — This constitutional guaranty takes from Congress the power to legislate in regard to mere religious belief, but leaves it free to act as to violations of social duties, peace, and good order. Laws against polygamy are therefore valid and constitutional.

*Reynolds v. U. S.* 98 U. S. 167.

## AMENDMENT II.

**Sec. 1. Right to bear arms.**—The States may regulate this right, subject to the power in Congress to organize and provide for a militia.<sup>1</sup> A statute prohibiting the carrying of concealed weapons is in the police power of States, and constitutional.<sup>2</sup>

1 Dunne v. People, 94 Ill. 120; People v. Affeldt, 11 Chic. L. N. 408.

2 State v. Willforth, 71 Mo. 523.

## AMENDMENT IV.

**Sec. 1. Personal security.**—This amendment is a check only on the federal government, its legislation and its processes.<sup>1</sup> An affidavit on the information of others is not probable cause, sufficient for a warrant; the oath of the real accuser is required;<sup>2</sup> nor is an affidavit alleging probable cause, but failing to state the facts constituting it, sufficient for a warrant.<sup>3</sup>

1 Moore v. Coxe, 10 Week. Notes Cas. 135.

2 In re Rule of Court, 3 Woods, 502.

3 In re Coleman, 15 Blatchf. 406.

## AMENDMENT V.

**Sec. 1. This amendment** is exclusively a restriction on the powers of the federal government, and not a restraint on the States.<sup>1</sup> The word "persons" as here used is applicable as well to corporations as to natural persons.<sup>2</sup> Infamous crimes in the meaning of this clause are only those made infamous or declared a felony by express act of Congress.<sup>3</sup> Such as are not infamous crimes may be prosecuted by information;<sup>4</sup> conspiring to counterfeit coin,<sup>5</sup> passing counterfeit coin,<sup>6</sup> stealing from the mails, and like offenses not being declared felonies may be so prosecuted.<sup>7</sup> A person is not in jeopardy, when an indictment against him is so invalid that a judgment on it would be annulled on appeal.<sup>8</sup> Where a penalty of fine and imprisonment is provided for one offense, recovery of the fine in a civil action, and the punishment by imprisonment in another, do not put a person twice in jeopardy.<sup>9</sup>

- 1 St Louis v. Richeson, 76 Mo. 470.
- 2 Railroad Tax Cases, 18 Fed. Rep. 385 ; San Mateo v. Southern Pac. R. R. Co. 8 Sawy. 238.
- 3 U. S. v. Wynn, 3 McCrary, 266.
- 4 U. S. v. Burgess, 3 McCrary, 278 ; U. S. v. Wynn, 3 McCrary, 266 ; U. S. v. Field, 16 Fed. Rep. 778.
- 5 U. S. v. Burgess, 3 McCrary, 278.
- 6 U. S. v. Field, 16 Fed. Rep. 778.
- 7 U. S. v. Wynn, 3 McCrary, 266.
- 8 Weston v. State, 63 Ala. 155 ; Kendall v. State, 65 Ala. 492.
- 9 In re Leszynsky, 16 Blatchf. 9.

**Due process of law.** — That no one can be deprived of his life, liberty, or property without due process of law is almost universal law.<sup>1</sup> The security of life, liberty, and property is a right *in rem* and not *in personam*.<sup>2</sup> Due process of law consists in notice to a person of proceedings against him, and a right to be heard in his own behalf.<sup>3</sup> Because laws in individual cases work hardships, is not a criterion that they lack the element of due process of law.<sup>4</sup> A statute providing for industrial schools for dependent infant females, is valid and does not infringe the guaranty of liberty.<sup>5</sup> Proceedings established for the levy and collection of taxes though differing from proceedings in courts of justice are due process of law,<sup>6</sup> if they provide for notice and an opportunity to be heard;<sup>7</sup> but where the assessment is arbitrary and a hearing is denied, it is unconstitutional and void.<sup>8</sup> A proceeding where one's property is summarily disposed of, is as to parties having no notice, not due process of law.<sup>9</sup> A seizure and confiscation of a vessel for violation of the law by the owner is valid, as the seizure is due notice;<sup>10</sup> but where the vessel is not the property of the offender, a forfeiture without notice to the owner is invalid.<sup>11</sup> The imposition of penalties on railroads for neglect to fence tracks is valid.<sup>12</sup> Statutes which impair the obligation of contracts deprive a person of property without due process of law.<sup>13</sup> Statutes authorizing municipal aid to corporations are valid.<sup>14</sup> Removal from office without a hearing, if in the power of the State, is not an invalid deprivation of rights.<sup>15</sup> Punishment without further hearing for contempt in presence of a court is

due process of law.<sup>16</sup> To strike an attorney from the rolls being discretionary with a court, such proceeding is valid without a hearing.<sup>17</sup>

- 1 *Blackman v. Lehman*, 63 Ala. 547.
- 2 *Wabash etc. Ry. Co. v. Shacklet*, 105 U. S. 864.
- 3 *Gilmore v. Sapp*, 100 Ill. 297.
- 4 *Kelly v. Pittsburgh*, 104 U. S. 78.
- 5 *Petition of Ferrier*, 103 Ill. 867, *County v. Humphreys*, 104 Ill. 378.
- 6 *Kelly v. Pittsburgh*, 104 U. S. 78; *Springer v. U. S.* 102 U. S. 586.
- 7 *In re Ah Chong*, 6 Sawy. 451.
- 8 *San Mateo Co. v. S. P. R. R. Co.* 8 Sawy. 238; *S. F. & N. P. Ry. Co. v. Dinwiddle*, 8 Sawy. 312.
- 9 *In re Ludwigson*, 3 Woods, 13; *Lavin v. Emigrant I. S. Bank*. 18 Blatchf. 1.
- 10 *The Ann*, 5 Hughes, 292.
- 11 *The J. W. French*, 5 Hughes, 429.
- 12 *Cairo etc. Ry. Co. v. Warrington*, 92 Ill. 157; *Speelman v. Missouri P. Ry. Co.* 71 Mo. 434.
- 13 *People v. Otis*, 90 N. Y. 48.
- 14 *Taylor v. Ypsilanti*, 11 Fed. Rep. 925; *Talcott v. Township of Pine Grove*, 1 Flip. 120.
- 15 *Donahue v. Will Co.* 100 Ill. 94.
- 16 *State v. Judges*, 32 La. An. 1256.
- 17 *Ex parte Wall*, 107 U. S. 265.

**Eminent domain.**—Private property can only be taken, appropriated, or damaged for public use through the exercise of the right of eminent domain.<sup>1</sup> Every person is entitled to notice, and a right to be heard in a proceeding to deprive him of his property without his consent.<sup>2</sup> Compensation is a condition precedent to taking private property without the owner's consent,<sup>3</sup> except in extreme cases, as where there is imminent public danger;<sup>4</sup> but a judgment unpaid and unsecured is not compensation.<sup>5</sup> It is not essential to constitute liability that the property be taken; impairing its value or destroying it are an exercise of the power of eminent domain.<sup>6</sup> This right exists in the federal government, and the exercise thereof cannot be curtailed, nor the manner prescribed by the State wherein the property is.<sup>7</sup> Whenever the government appropriates private property, an implied promise is made that its value shall be paid the owner.<sup>8</sup> Where simply the use of property

and not the property itself is impaired, compensation need not be made,<sup>9</sup> as in case of consequential damages from grading a public street.<sup>10</sup> Where private property is taken, simply because obnoxious to public health, morals, or public policy, compensation must still be made therefor.<sup>11</sup> Laws altering or affecting rights under corporation charters, if in the powers of the legislative body are valid, and for injuries, compensation need not be made;<sup>12</sup> but if there is no power reserved to alter the charter, compensation must be made for any loss.<sup>13</sup> A person may refuse to lend property for the public use, on hire, and if taken he may recover the full value of it.<sup>14</sup> The general government may, when needed for the exercise of its functions, appropriate State property under the right of eminent domain.<sup>15</sup> Public land which has been duly settled on cannot be appropriated except on making just compensation.<sup>16</sup> Property in patents, as much as any other private property, is exempt from being taken except on just compensation.<sup>17</sup>

1 Hollingsworth v. Tensas Parish, 17 Fed. Rep. 103.

2 Wilburn v. McCalley, 63 Ala. 436; Zeigler v. S. N. R. R. Co. 58 Ala. 594; Burns v. Multnomah Ry. Co. 8 Sawy. 543.

3 Pryzhylowicz v. Missouri R. Co. 3 McCrary, 586; Russell's Case, 7 Ct. of Cl. 227; New Orleans v. Jones, 68 Ala. 48.

4 Russell's Case, 7 Ct. of Cl. 227; Blanchard v. Kansas, 16 Fed. Rep. 444; New Orleans Ry. Co. v. Jones, 68 Ala. 48.

5 Pryzhylowicz v. Missouri R. Co. 3 McCrary, 586.

6 Johnson's Case, 8 Ct. of Cl. 243.

7 Great Fall's Case, 16 Ct. of Cl. 160.

8 Hersch's Case, 15 Ct. of Cl. 385.

9 Transportation Co. v. Chicago, 99 U. S. 635.

10 Wels v. Madison, 75 Ind. 241.

11 New Orleans W. Co. v. Tammany W. Co. 14 Fed. Rep. 194.

12 Spring Valley W. Co. v. Bartlett, 8 Sawy. 555; Greenwood v. Freight Co. 105 U. S. 13.

13 U. S. v. Louisville etc. Co. 1 Flipp. 260.

14 Peck's Case, 14 Ct. of Cl. 84.

15 Anonymous, 16 Opin. Atty.-Gen. 369.

16 U. S. v. Tichenor, 12 Fed. Rep. 415.

17 Campbell v. James, 17 Blatchf. 42.

## AMENDMENT VI.

**Sec. 1. Rights of accused.**—The right to a speedy trial is

a right to trial at the earliest opportunity, having regard to time for the prosecution to prepare, with reasonable diligence for the trial, and no longer delay is proper.<sup>1</sup> This amendment does not prohibit a prosecution by information, if the prisoner be granted a jury trial.<sup>2</sup> That "every person has a right to be informed of the nature of the accusation," is held to mean that the offense must be set out with clearness, and all necessary certainty to apprise the accused of the crime of which he stands charged,<sup>3</sup> and this applies as well to preliminary proceedings for arrest as to the indictment itself.<sup>4</sup> The accused has a right to confront and cross-examine witnesses against him,<sup>5</sup> and the right is mutual and exists on the part of the prosecution also.<sup>6</sup> Dying declarations are an exception to this general rule.<sup>7</sup> The reading of reporter's notes in absence of the reporter does not give the accused this right.<sup>8</sup> The accused may, by admitting that witnesses, if produced against him would testify to certain facts, waive the right to be confronted by them.<sup>9</sup> He will also waive this right if he wrongfully detains, or keeps from testifying, the witnesses against him.<sup>10</sup> This amendment expressly abrogates the rule by which a prisoner might be denied appearance by counsel.<sup>11</sup>

1 U. S. v. Fox, 3 Mont. 512.

2 U. S. v. Borger, 19 Blatchf. 250.

3 U. S. v. Noelke, 17 Blatchf. 554.

4 In re Coleman, 15 Blatchf. 415.

5 People v. Lee Fat, 54 Cal. 531 ; U. S. v. Angell, 11 Fed. Rep. 34.

6 U. S. v. Angell, 11 Fed. Rep. 34.

7 Green v. State, 66 Ala. 40.

8 People v. Lee Fat, 54 Cal. 531.

9 U. S. v. Sacramento, 2 Mont. 239.

10 Reynolds v. U. S. 98 U. S. 145.

11 Johnson v. Lewis, 2 Mont. 159.

## AMENDMENT VII.

**Sec. 1. Trial by jury.**—The provisions of this section are not intended to apply to or to restrict the power of the States on the subject of jury trials.<sup>1</sup> A State statute is therefore valid which regulates jury trials,<sup>2</sup> and provides for a waiver thereof,<sup>3</sup>

or for a prosecution by information.<sup>4</sup> This amendment is confined to suits at common law and does not apply to suit against the government.<sup>5</sup> Actions at common law are those in which legal rights are to be determined as distinguished from those where equitable rights are decided,<sup>6</sup> and the determination by a court of equity of matters without a jury is not in conflict with this amendment.<sup>7</sup>

1 *Huston v. Wadsworth*, 5 Colo. 213.

2 *Venine v. Archibald*, 3 Colo. 163.

3 *Jones v. People*, 2 Colo. 509.

4 *Chase v. People*, 2 Colo. 509.

5 *McElrath v. U. S.* 102 U. S. 426; *McElrath's Motion*, 12 Ct. of Cl. 312.

6 *Keith v. Rockingham*, 18 Blatchf. 246; *The B. F. Woolsey*, 18 Blatchf. 344.

7 *Ressler v. Witmer*, 1 Pearson, 174; *Barton v. Barbour*, 104 U. S. 126.

### AMENDMENT VIII.

**Sec. 1. Cruel punishments.**—This provision is not a restraint on the States but only on the general government.<sup>1</sup> The punishment of whipping for crime is not an unusual or cruel punishment.<sup>2</sup>

1 *Foote v. State*, 59 Md. 264.

2 *Garcia v. Territory*, 1 New Mexico, 415; *Foote v. State*, 59 Md. 264.

### AMENDMENT X.

**Sec. 1. Congress** cannot properly exercise any power which is not an incident to an express power and necessary to its execution. Every valid act must find in the Constitution some warrant of its passage.

*U. S. v. Harris*, 106 U. S. 629.

### AMENDMENT XI.

**Sec. 1. Limitation of judicial power.**—This amendment is adopted for the protection of the States. To construe it to mean that State property might be alienated in a suit against a State official deprives the State of her day in court.

*Preston v. Walsh*, 10 Fed. Rep. 315; *Chaffraix v. Board of Liquidation*, 11 Fed. Rep. 638.

## AMENDMENT XIII.

**Sec 1. Slavery prohibited.**—This amendment relates only to slavery, and the congressional power extends only to the state of slavery and its incidents, and not to protection of privileges, such as equal accommodation in inns, public conveyances, and places of public amusement.

Civil Rights Cases, 3 Sup. Ct. Rep. 18; but see dissenting opinion of Harlan, J. 3 Sup. Ct. Rep. 83.

**Sec. 2.** This clause does not authorize Congress to regulate or control the admission of evidence in State courts,<sup>1</sup> nor to pass laws for the punishment of ordinary crimes and offenses against the colored race; such powers belong to the States.<sup>2</sup> But an act of Congress so far as it removes the disabilities of negroes to testify or to sue is within its power and valid.<sup>3</sup>

1 State v. Rash, 1 Houst. Del. Crim. 271.

2 U. S. v. Harris, 106 U. S. 629.

3 Handy v. Clark, 4 Houst. 16; State v. Rash, 1 Houst. Del. Crim. 271.

## AMENDMENT XIV.

**Sec. 1.** This amendment does not give to Congress the power to protect by legislation the rights of State and National citizenship.<sup>1</sup> The right of citizenship is not conferred on Chinamen by this clause, except such as are born in the United States.<sup>2</sup> The object of this clause was to protect from the hostile legislation of the States the privileges and immunities of citizens of the United States.<sup>3</sup> It is a restraint on the States as distinguished from the restrictions placed on the general government by the Fifth Amendment.<sup>4</sup> It limits the exercise of all the powers of the State which can touch the individual or his property,<sup>5</sup> and applies not only to the State but to all its instrumentalities and agencies, to its executive, legislative, and judicial departments, and to the subordinate legislative bodies of its cities and counties.<sup>6</sup> It is applicable only to the passage and enforcement of laws, not to their administration.<sup>7</sup> "Persons" as used in this clause refers as well to corporations as to natural persons.<sup>8</sup>



- 1 *Smoot v. Kentucky Cent. Ry. Co.* 13 Fed. Rep. 337.
- 2 *State v. Ah Chew*, 16 Nev. 51.
- 3 *U. S. v. Harris*, 106 U. S. 629.
- 4 *Virginia v. Rives*, 100 U. S. 313; *U. S. v. Harris*, 106 U. S. 627; *Civil Rights Cases*, 3 Sup. Ct. Rep. 18; *Le Grand v. U. S.* 12 Fed. Rep. 531; *Railroad Tax Cases*, 18 Fed. Rep. 385; *St. Louis v. Richeson*, 76 Mo. 470.
- 5 *San Mateo Co. v. Southern Pac. R. R. Co.* 8 Sawy. 238.
- 6 *Ah Kow v. Nunan*, 5 Sawy. 552; *Parrott's Case*, 6 Sawy. 349.
- 7 *Green v. State*, 16 The Reporter, 390; *Claybrook v. Owensboro*, 16 Fed. Rep. 297; *Smoot v. Kentucky Cent. R. R. Co.* 13 Fed. Rep. 337.
- 8 *Railroad Tax Cases*, 13 Fed. Rep. 722; *Railroad Tax Cases*, 18 Fed. Rep. 385; *San Mateo Co. v. Southern Pac. R. R. Co.* 8 Sawy. 238; *People v. Fire Asso.* 92 N. Y. 311; *contra*, *Central Pac. R. R. Co. v. State Board of Equalization*, 60 Cal. 35.

**Civil Rights.**—The main purpose of this amendment was to establish the citizenship of the negro.<sup>1</sup> A statute which excludes from juries citizens of African descent, because of race or color, is unconstitutional.<sup>2</sup> But if the selection of jurors be without regard to race or color, though the panel or jury consist wholly of white persons, the law is valid, and there is no cause for complaint.<sup>3</sup> A white man, being of the favored race, cannot complain that negroes were excluded from the jury that tried him.<sup>4</sup> A law which excludes Chinese from juries is not in conflict with this clause.<sup>5</sup> This amendment prohibits the abridgement of privileges of citizens of the United States, but does not forbid the abridgement of privileges as citizens of States. Marriage is not an immunity protected by this provision, and may be so abridged.<sup>6</sup> A State statute prescribing a severer penalty for adultery between whites and negroes than between parties of the same race does not discriminate against either, and is valid.<sup>7</sup> Where schools of equal excellence are provided for both classes it is not unconstitutional to prohibit whites and negroes from attending the same schools.<sup>8</sup> An act limiting admission of attorneys to white male citizens is not unconstitutional.<sup>9</sup> The Civil Rights Bill, in attempting to protect the privileges of citizens as to equal accommodations at inns, and in public conveyances and places of amusement is unconstitutional, and not in powers of Congress.<sup>10</sup>

1 *Stauder v. West Virginia*, 100 U. S. 303; *Virginia v. Rives*, 100 U. S. 313.

- 2 *Stauder v. West Virginia*, 100 U. S. 808; *Ex parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370; *Bush v. Kentucky*, 107 U. S. 110.
- 3 *Bush v. Kentucky*, 107 U. S. 110; *Hicks v. Commonwealth*, 13 Chic. L. N. 380.
- 4 *Commonwealth v. Wright*, 79 Ky. 22.
- 5 *Nevada v. Ah Chew*, 16 Nev. 50.
- 6 *Ex parte Kinney*, 3 Hughes, 1; *Ex parte Francois*, 3 Woods, 367; *Green v. State*, 58 Ala. 190; *Francois v. State*, 9 Tex. App. 144.
- 7 *Pace v. Alabama*, 106 U. S. 583; *Green v. State*, 58 Ala. 190; 8 C. 69 Ala. 231.
- 8 *Bertonneau v. City Directors*, 3 Woods, 177; *U. S. v. Buntin*, 12 Fed. Rep. 730; *Claybrook v. City of Owensboro*, 16 Fed. Rep. 297; *People v. Gallagher*, 11 Abb. Pr. 187; *People v. Gallagher*, 17 Cent. L. J. 481; *Board of Ed. v. Tinnon*, 13 Cent. L. J. 292; *Commonwealth v. Davis*, 10 Week. Notes Cas. 155.
- 9 *In re Taylor*, 48 Md. 28.
- 10 *Civil Rights Cases*, 3 Sup. Ct. Rep. 18; but see dissenting opinion, Harlan, J. 3 Sup. Ct. Rep. 33; see *contra*, *U. S. v. Newcomer*, 11 Phila. 519.

**Due process of law.**—Due process of law means in due course of legal proceedings including notice, and an opportunity to be heard.<sup>1</sup> Every person has a right to personal liberty, free from restraint, except by due process of law;<sup>2</sup> a statute requiring a license for the removal of laborers from the State is invalid.<sup>3</sup> A prosecution in criminal cases by information is valid, both notice and a hearing being granted thereby.<sup>4</sup> Conviction before a *de facto* officer is due process of law.<sup>5</sup> Imprisonment for violation of a void ordinance is without due process of law,<sup>6</sup> but imprisonment under a valid law, though there be error in the proceedings, is not imprisonment without due process of law.<sup>7</sup> No one can be deprived of his property, or of vested rights, except by due process of law.<sup>8</sup> A State statute providing for taxation and assessment and a hearing thereon is due process of law;<sup>9</sup> but where the assessment is arbitrary, and without an opportunity of hearing, it is unconstitutional;<sup>10</sup> but if at tax suit a person has a hearing and day in court it is valid.<sup>11</sup> A State law trebling taxation as a penalty for fraud is valid.<sup>12</sup> A statute limiting municipal taxation to prevent payment of a judgment is valid.<sup>13</sup> A State law altering the mode of fixing water rates in a city is valid.<sup>14</sup> An act validating corporation contracts which were *ultra vires*

is valid.<sup>15</sup> A State law providing for double damages against railroads for failure to fence tracks is valid.<sup>16</sup> Recording and registry laws are valid.<sup>17</sup> State statutes making a garnishee liable if he fail to render an account,<sup>18</sup> or providing that the use of an easement shall not be permitted as evidence of adverse possession are in conflict with this provision.<sup>19</sup>

1 *Peerce v. Kitzmuller*, 19 W. Va. 564; *Burns v. Multnomah Ry. Co.* 8 Sawy. 543.

2 *Joseph v. Randolph*, 16 The Reporter, 227.

3 *Joseph v. Randolph*. 16 The Reporter, 227.

4 *Kalloch v. Superior Court*, 56 Cal. 229.

5 *In re Ah Lee*, 6 Sawy. 510.

6 *In re Lee Tong*, 13 Fed. Rep. 253.

7 *In re Ah Lee*, 6 Sawy. 410.

8 *Burns v. Multnomah Ry. Co.* 8 Sawy. 543; *Clark v. Mitchell*, 63 Mo. 627; *Peerce v. Kitzmuller*, 19 W. Va. 564; *White v. Crump*, 19 W. Va. 583.

9 *Reclamation Dist. v. Hagar*, 6 Sawy. 567.

10 *Railroad Tax Cases*, 13 Fed. Rep. 722; *San Francisco etc. Ry. Co. v. Dinwiddle*, 8 Sawy. 312; *Burns v. Multnomah Ry. Co.* 8 Sawy. 543; *Campbell v. Dwiggins*, 83 Ind. 473; *Tyler v. State*, 83 Ind. 563.

11 *St. Louis v. Richeson*, 76 Mo. 470.

12 *State v. Moss*, 60 Mo. 495.

13 *Louisiana v. New Orleans*, 3 Sup. Ct. Rep. 211.

14 *Spring V. W. W. v. Bartlett*, 8 Sawy. 555.

15 *Gross v. U. S.* 2 Sup. Ct. Rep. 940.

16 *Speelman v. Mo. P. Ry. Co.* 71 Mo. 434.

17 *Vance v. Vance*, 108 U. S. 92.

18 *Vaughan v. Furlong*, 12 R. I. 127.

19 *Reynolds v. Randall*, 12 R. I. 522.

**Equal protection of the laws.**—This clause applies to all cases where the equal protection of the laws is denied to defendant.<sup>1</sup> "Equal protection of the laws" as here used, means equal right to resort to courts for the redress of wrongs and enforcement of rights, and exemption from unequal burdens or exactions of any kind.<sup>2</sup> Congress cannot provide for punishment of individuals conspiring to deprive others of equal protection of the laws; this clause is aimed at State legislation only;<sup>3</sup> nor does it relate to territorial or municipal arrangement for portions of a State.<sup>4</sup> Taxation must be uniform and equal, requiring not only uniformity in the per-

centage charged, but also in the mode of assessment.<sup>5</sup> But the mode of assessment is uniform, if valuation is ascertained in the same manner, though it be by different officers.<sup>6</sup> A provision that brokers and bankers shall not receive money, if they know they are insolvent, is valid.<sup>7</sup> A State statute discriminating between Chinese and other aliens, is void, as denying them, the equal protection of the laws.<sup>8</sup> So a statute forbidding the employment of Chinese is void.<sup>9</sup> A law prohibiting aliens incapable of becoming citizens from fishing in State waters is discriminating and void.<sup>10</sup> A city ordinance requiring prisoner's hair to be cut, being a more degrading punishment as to Chinese than to other aliens, discriminates as to the former, and is void.<sup>11</sup> Statutes discriminating in the remedies under the law, against non-residents, are void.<sup>12</sup>

1 *Virginia v. Rives*, 100 U. S. 313.

2 *Railroad Tax Cases*, 13 Fed. Rep. 722; *Railroad Tax Cases*, 18 Fed. Rep. 385.

3 *U. S. v. Harris*, 106 U. S. 629.

4 *Missouri v. Lewis*, 101 U. S. 22.

5 *Railroad Tax Cases*, 13 Fed. Rep. 722; *Railroad Tax Cases*, 18 Fed. Rep. 385.

6 *San Francisco & N. P. Ry. Co. v. Board of Equalization*, 60 Cal. 12.

7 *Barker v. State*, 54 Wis. 368.

8 *Baker v. Portland*, 5 Sawy. 566; *Parrott's Case*, 6 Sawy. 349.

9 *Parrott's Case*, 6 Sawy. 349.

10 *In re Ah Chong*, 6 Sawy. 451.

11 *An Kow v. Nunan*, 5 Sawy. 552.

12 *Pearson v. Portland*, 69 Me. 278.

**Sec. 4. Confederate debts.**—A contract made in an insurrectionary State, if it was not made in aid of rebellion, is valid, and the payment not prohibited by this clause.

*Stuart v. County of Greenbrier*, 19 Va. 95.

**Sec. 5. Enforcement.**—Wherein the States do not conform their laws to the requirements of this amendment, Congress is authorized to enforce it by suitable legislation.<sup>1</sup> It is not direct legislation that is authorized, but only corrective legislation, such as may be necessary for redressing or correcting the effect of State laws in conflict herewith.<sup>2</sup> The Civil Rights Bill, in its

attempt to protect the privileges of citizens as to equal accommodation at inns, places of public amusement or in conveyances, is unconstitutional and not in the powers of Congress.<sup>3</sup>

1 U. S. v. Harris, 106 U. S. 629.

2 Civil Rights Cases, 3 Sup. Ct. Rep. 18.

3 Civil Rights Cases, 3 Sup. Ct. Rep. 18; but see contra, dissenting opinion Harlan, J. 33; U. S. v. Newcomer, 11 Phila. 519.

## AMENDMENT XV.

**Sec. 1. Elective franchise.** — This clause does not confer on any one the right of suffrage. It merely invests citizens of the United States with a constitutional guaranty of exemption from discrimination in the exercise of the elective franchise.<sup>4</sup> The adoption of this amendment rendered inoperative any existing State law limiting the right of suffrage to the white race.<sup>2</sup>

1 U. S. v. Harris, 106 U. S. 629; Le Grand v. U. S. 12 Fed. Rep. 577.

2 Neal v. Delaware, 103 U. S. 370.

**Sec. 2. Enforcement.** — The power of Congress to legislate on the subject of the right of suffrage at State elections rests on this amendment, and is limited thereby to prohibitions of discrimination on account of race, color, or previous condition of servitude.<sup>1</sup> Prohibitions at such elections against intimidation which does not so discriminate are unconstitutional.<sup>2</sup> The powers of Congress to regulate elections extend only to State action, and not to the punishment of individuals acting on their own responsibility, and not under color of law.<sup>3</sup>

1 U. S. v. Amsden, 10 Biss. 283; U. S. v. Munford, 16 Fed. Rep. 223.

2 U. S. v. Amsden, 10 Biss. 283.

3 Le Grand v. U. S. 12 Fed. Rep. 577; U. S. v. Amsden, 10 Biss. 283.



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